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Public Services, Commission on the  
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Report on the public departments of the province by a commission appointed by His Excellency the Lieutenant Governor ... in 1839.]

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C. POULETT THOMSON.

Governor ... in 1839.]

The GOVERNOR-GENERAL transmits for the information of the House of Assembly, in compliance with his Answer of the 18th instant, such of the Reports of the Commissioners appointed to enquire into the Public Departments as it has been possible, up to the present time, to transcribe.

TORONTO, 20th January, 1840.



#### THE OFFICE OF SHERIFF,

PUBLIC GAOLS, AND

CLERK OF THE CROWN AND PLEAS.

THE Committee appointed to inquire into the office of Sheriff, and of the Clerk of the Crown and Pleas, begs leave to report as follows:—

The following are the instructions communicated by the Executive Government for the guidance of this Committee:

“ The Committee will enquire into the manner in which the duties of these important offices have been performed.

Instructions given  
by Executive Gov-  
ernment to the  
Committee.

“ They will consider whether any alteration is required in the amount and description of

Sheriff's security.

the security furnished by the Sheriffs under the existing law, for the due performance of their duties.

**Moneys remaining  
in hands of Sheriffs  
may be deposited in  
Chartered Banks**

“ They will further consider whether the moneys of suitors coming into the hands of Sheriffs, or their officers, when not promptly paid over to the parties to whom they belong, might not advantageously be placed in deposit in one of the chartered banks, instead of being left in the Sheriffs’ possession.

**If moneys collected  
in behalf of Crown  
are promptly paid  
to Receiver Gen'l.**

“ They will ascertain if moneys collected by the Sheriffs on behalf of the crown are regularly and promptly transmitted by them to the Receiver General, and if not, they will suggest such arrangements as will best insure punctuality and exactitude.

**As to mode and  
expense of conveying  
Prisoners.**

“ They will inquire into the mode and expense of conveying prisoners from one place to another, and will suggest any measures of improvement that may seem to them expedient.

**As to state of Pub-  
lic Gaols.**

“ In connexion with the duties of the Sheriffs, the Committee will report generally upon the state of the public Gaols, and the system of discipline pursued in them.

**As to changes ne-  
cessary in office of  
Clerk of Crown  
and Pleas.**

“ As regards the office of Clerk of the Crown and Pleas, the Committee will inquire into the nature and extent of the duties appertaining to it, and will report any changes of arrangement which they may think advisable.

**As to extent of  
emoluments and  
need of assistance.**

“ They will consider also the extent and nature of the emoluments—the assistance necessary for the efficient performance of the duties of the office—and the advisability of substituting fixed salaries for fees as the mode of remuneration.”

“As the object of the appointment of the Commission is to investigate generally all matters of public interest connected with the several departments, this Committee will understand that they are not restricted to limit their inquiries by the strict letter of the foregoing queries, but that in the spirit of the same they are to pursue any course of investigation which may appear to them expedient.”

To investigate generally on all matters connected with the Public Departments.

In pursuing the line of investigation marked out for its guidance in the instructions of His Excellency the Lieutenant Governor, this Committee has extended its inquiries as widely as the time at its disposal will admit.

Inquiries extended as time would permit.

The subjects referred to the Committee naturally divide themselves into three heads. It is proposed under the first to consider the office of Sheriff, and how far the present system and management may be susceptible of improvement, and whether it may not be found necessary to extend additional protection to that officer when acting in the due and faithful discharge of his duties.

Whether additional protection to Sheriffs be necessary.

Under the second head, the state of the public Gaols and the discipline by which they are governed, will claim the attention of the Committee, and

State of Gaols will claim the attention of Committee.

Thirdly, the office of the Clerk of the Crown and Pleas will be noticed with a view to the general system under which that department is regulated,—and whether any modification can be adopted therein, with advantage to the public service.

Whether beneficial modification can be made in department of Clerk of Crown and Pleas.

## First division.

In relation to the important office of Sheriff the Committee has from various causes felt much difficulty in determining the precise merits and demerits of the system by which its details are usually regulated.

Not practicable to institute local inquiries in the several districts into the office of Sheriff.

Were it necessary for the Committee to report fully on the manner in which business has been conducted by the several Sheriffs, particularizing the various merits or imperfections of the several offices of the department, it would be absolutely necessary to institute local inquiries in the several districts, or to depute some qualified individuals to prosecute the requisite investigations on the spot.

Such a course being at present impracticable, the Committee is constrained to act on the materials which it has been enabled to collect, and the general information which its members possess.

Credit due to some others charged with laxity and irregularity.

It is not doubted that the duties of Sheriff are performed in the several districts with different degrees of comparative efficiency, according to the character, zeal, and ability of the several incumbents and their necessary assistants—that, in some great credit is due, while in others great laxity and irregularity have prevailed.

Various causes might be assigned for the existence of irregularities in an office, the details and operations of which are so extensive and over which a vigilant and increasing superintendence is required to prevent derangement and confusion.

Between the office of Sheriff in England and in this Province a perfect analogy does not exist. In England the Sheriff is appointed to office by a system of selection differing widely from the method that prevails here. There the individual when nominated is compellable to serve in an office not expected to yield emolument, but from which expense, risk, and inconvenience, are generally anticipated. Here the appointment is eagerly sought after, and when gained, is considered as a permanent provision for the incumbent.

The duties in this Province are almost wholly ministerial, with the exception of partition of Lands. (Act 3rd Wm. 4th, chap. 2.) The Committee is not at present aware of any judicial services required to be rendered by that functionary—the selection of Juries for the various Civil and Criminal Courts is intrusted to him, his discretion being limited only by the qualification lists and the exemptions to which particular statutes or recent service entitle parties otherwise competent and liable.

As an officer of the Crown, the Sheriff attends to the collection of fines and amerciaments, enforces process,—is entrusted with the charge of prisoners—the appointment of Gaoler—the superintendence of the Gaol—the due execution of the Law, and owes other general duties incidental to his character as a high peace officer and guardian of the interests of the Crown.

A perfect analogy does not exist between the office of Sheriff in this Province and in England.

Duties of Sheriff.

Principal duty due  
execution of civil  
process.

The duty, however, which principally engages his attention is the service and due execution of civil process, including the care and custody of Debtors, and the seizure and sale of their estates real and personal.

In this branch of his duties the conduct of the Sheriff is most open to exception, and any want of punctuality or vigilance being soonest discovered and most immediately felt, is liable to form the subject of prompt and too often of well-grounded complaint.

Entire business of  
the department  
generally devolves  
on the deputy.

Each Sheriff generally employs a Deputy to whose management the entire business of the department is very generally confided, and in all cases where the principal, from any cause, may not personally superintend the working of his office, it is obvious that the regularity or derangement of his duties will be found to depend on the ability and attention of the Deputy.

Deputy indispens-  
able.

Where the district is populous and the duties correspondingly numerous a Deputy with one or more assistants is indispensable, and the Law appears in all cases to contemplate, if it do not positively require, the appointment of such an officer.

Well-grounded  
complaints exist in  
regard to the  
collection of  
Moneys.

From the statements that have been laid before the Committee in the progress of its investigation, and the knowledge and experience of its members, the conviction is entertained that in the execution of the Sheriff's duties in relation to the collection of moneys, the most frequent and well-grounded com-

plaints of abuses proceed, and remedial measures are most loudly called for.

In enforcing the collection and payments of moneys under judicial process, the present system of controlling and coercing the Sheriff is thought susceptible of improvement, and if placed on a more effective footing, it is conceived would greatly conduce to the interests of suitors, and eventually of Sheriffs themselves.

Control of  
Sheriffs susceptible  
of improvement.

As in England, a strong and summary power of interference exists in the superior Courts here, whenever in the execution of process the conduct of the Sheriff is made the subject of formal complaint.

The peculiar circumstances of the country, the state of society, the inattention of those to whom process is directed when a necessity exists for coercing the Sheriff, together with other causes combine to render the remedies at present established for the prevention and correction of abuses, as ineffectual in practice as they are apparently formidable.

When judicial process is placed in the hands of a Sheriff against the estate of a Debtor, the object of a Plaintiff must be presumed to be, to obtain, with all the expedition which legal forms permit, the amount which has been awarded to him by the judgment of the Court; and it is doubtless the duty of the Sheriff to whom such process is directed, to proceed with due diligence to collect the same, and to hand over to the party inter-

See Appendix :  
 Letters of  
 Mr. J. G. Spragge,  
 " J. H. Cameron,  
 " B. Dougall.

ested the amount to which he is entitled. It is much feared, however—nay, it is beyond a doubt, that instances occur where grievous and injurious delays take place in consequence of an indulgence beyond the legal period granted by the Sheriff to the Debtor, sometimes as it is alleged on the understanding, that all extra costs and damages which that officer may sustain, shall be defrayed by the individual accommodated by the delay.

Under the present system the Court can enforce a return by a peremptory order, but on that return being made its truth or falsehood can only be determined by the verdict of a Jury, after the costs and formalities of a regular trial. A mode will be hereafter pointed out, which, in addition to existing provisions, the Committee is induced to think may be adopted without being exposed to the charge of undue severity, with a view to obviate existing inconveniences.

Qualifications required.

Considering the Sheriff as the receiver of large sums of money, the property of the Crown and of individual Suitors, the Legislature some years since enacted that he should be required to possess certain property to render him eligible for that office, and to give certain securities that he would duly perform his duty. The Statute 3rd William 4th Chapter 9, directs the amount and nature of the qualification and security required.

By the 8th section it is provided that no person shall be appointed to fill the office of

Sheriff in this Province, who shall not be possessed of real estate within the same of the value of seven hundred and fifty pounds above all incumbrances, and who shall not file an affidavit of that fact in the office of the Provincial Secretary before he receives his commission.

Sheriffs must possess real estate to the amount of 750*l.*

The Committee is of opinion that the extension of Commercial transactions and the general circumstances of the country, would now warrant the establishing of a higher scale of qualifications than the present, and would therefore recommend its being raised in the following manner :

Higher scale of qualification required.

That each person previous to being appointed to the office of Sheriff, shall be seized in fee of real estate in the Province, to the value of one thousand pounds over and above all incumbrances, and shall file an affidavit in the office of the Provincial Secretary, that he is worth that sum in real estate over and above all incumbrances, and particularize in such affidavit the parcels of land composing, and the extent, situation, and nature of such property, and he shall also with such affidavit file an abstract of his title thereto, all which shall be submitted to the Attorney General, and be approved of by him if the title be found correct.

Recommended qualification.

The moneys received on account of the Crown being much less in amount than the receipts on account of Individuals, the Committee is disposed to recommend that the

Security to the Crown.

Sheriff shall furnish security to Government, himself in the sum of five hundred pounds, and two sureties in the sum of two hundred and fifty pounds each, to be approved of by the Inspector General of Public Accounts, and to justify by affidavit, to be filed as before suggested—in which affidavit shall be specified the property from which the qualification is derived, in the sums for which they respectively become bound.

**Civil security.**

As a guarantee for the due performance of the duties of the office, so far as the interests of private suitors are involved, the Committee recommends the required security to be as follows:—

A personal obligation of the Sheriff in the sum of one thousand pounds, and sureties not exceeding six, and not less than two in number for the like sum of one thousand pounds, to justify by affidavit in the manner prescribed for the sureties required to Government:

At the end of each year during his continuance in office, the Committee recommends that the Sheriff be required to file an affidavit, similar in purport and tendency to that sworn by him on his first entering upon office, and when produced to the Inspector General, if the property on which he justifies be not the same as in the prior affidavit, the value shall be proved and the title be examined and approved of by the Attorney General, as on his first appointment to office.

Tenure of Office  
Four years.

The Committee is disposed also to recommend that the office of Sheriff shall be vacated at the end of every four years from the appointment of any individual thereto, and that such person shall not be reappointed unless, in addition to his perfecting the various securities and affidavits already recommended, Her Majesty's Court of Queen's Bench shall certify to the Executive Government, that it appears to that Court, so far as it may have come to its knowledge, that the Sheriff during his term of office hath faithfully and truly discharged the various duties devolving on his department, and that so far as had been ascertained all claims against him as Sheriff were satisfied, moneys paid over, writs executed, and the general business conducted to the satisfaction of the Court.

And the Court should be empowered to require the Judge of the District Court to make a report of the state of the business transacted through the Sheriff's office for his Court, the better to enable the Court of Queen's Bench to grant the necessary certificate to be laid before the Executive Government.

If this course should not meet approval, the Committee would recommend the adoption of some other salutary method for ensuring the attainment of the objects contemplated.

It has been suggested to the Committee from various quarters entitled to much consideration, that to ensure the personal super-

Eligibility to  
Parliament.

See Appendix:  
Letters of  
W. W. Baldwin,  
G. S. Tiffany,  
J. H. Cameron.

intendence of the Sheriff in the various important duties which he has to perform, and to prevent an abuse of the powers with which his office invests him in the execution of process, it would be expedient that he should be rendered ineligible to represent in the House of Assembly, any County or Town within his own District during his continuance in office.

The Committee is aware that many cogent arguments may be urged in favor of such an exclusion, but forbears offering any recommendation on the subject, leaving it to the wisdom of Parliament to adopt such course as may seem meet on this head.

In attempting to suggest improvements in the system which for many years, both here and in the parent state, has guided the superintendence of the Courts of Law over the execution of their various processes, by the Sheriffs to whom they are respectively directed, the Committee is fully sensible of the exceeding difficulty of the task.

Easy to propose  
amendments, yet  
due regard should  
be had to right of  
all parties.

It is easy to propose amendments calculated to coerce and bind down the Sheriff within limits much narrower than are at present prescribed, and to offer greater facilities to suitors in proceeding against that functionary: yet it is absolutely necessary that a due regard should be had to the rights and claims of all parties to be affected by the measure.

While the suitors on the one hand call loudly for legislative and judicial interference to correct abuses, which with apparent justice

they assert to exist, on the other hand, the many difficulties in the way of a rigid and unsparing enforcement of legal process on the part of the Sheriff, under the peculiar circumstances of the country in reference to its pecuniary resources, seem to require that the Committee should pause before it decides on recommending changes which the most mature deliberation and the most rigid necessity should alone induce it to advocate.

It has been already stated that, in the execution of those writs by which moneys are directed to be levied within prescribed periods, the most important failures are observed where the officer entrusted with the execution of the process is wanting in attention, principle, or ability.

Many instances occur in which obstacles, difficult to be surmounted, stand in the way of immediate and implicit obedience to the mandate of the Court.

The property of the debtor may be so situated, among the new settlements of a thinly-peopled country, as to render it difficult and sometimes almost impossible to convert it into money for the satisfaction of the creditor. At other times, conflicting claims, growing out of assignments or sales, sometimes bona fide, but too often fraudulent, embarrass the Sheriff, and involve him in great perplexity and responsibility.

But, in legislating for the well-being and advantage of the community, it is impossible

Most failures  
arising from  
inattention or  
inability.

Difficulties attend-  
ing Sheriffs in due  
execution of their  
duties hard to  
remedy.

so to frame enactments as to prevent the occurrence of cases of individual hardship and occasional inconvenience; and, on this principle, the Committee, after much reflection, feels bound to recommend the adoption of additional measures calculated to ensure the peremptory enforcement of legal process by the ministerial officers entrusted with its execution.

It is almost universally admitted that the means now at the disposal of the court, for compelling speedy and correct returns of the processes it may award, have, in many instances, failed to answer the ends for which they were designed, to the great delay, expense, and disappointment of parties seeking the legal enforcement of their just demands.

The Committee, therefore, under these circumstances, and with these impressions, feels called upon to suggest the following remedial measures:

Summary power of quashing false Returns.

It proposes that on the return of any writ of execution into Court, the party considering himself aggrieved or delayed by such return, shall be at liberty to apply, on affidavit, to the Court, stating his objection to such return, and to move to set it aside as false, whereupon a rule nisi may be issued, calling on the Sheriff to show cause; and if, after the usual time allowed, no adequate cause be shown, then the Court from whence the process issued should have the power to set aside such return as false, and make such

order on the Sheriff, respecting the costs and payment of the original sum or otherwise, as may in its discretion seem just.

In the event of contradictory statements being advanced on oath, or in doubtful or intricate cases, the Committee would advise that the Court should have the power to direct an issue to ascertain the truth or falsehood of the points in dispute, or to cause a special case to be entered of record.

The Committee is of opinion that by thus arming the legal tribunals with additional powers, many of the evils now complained of by suitors may be obviated.

It would only be in cases where the falsehood of a return was made to appear palpable by unrebutted testimony, that this discretionary interference would take place. No bona fide return ought or would ever be subjected to this summary proceeding, nor any Sheriff be condemned as guilty of a violation of his duty without being fully and openly heard in his defence.

The Committee would further recommend, that for the purpose of avoiding the formalities and expense of an action at law, and to render more efficacious the security put in for the Sheriff, that the Court should be enabled on hearing an application to that effect, clearly substantiated by affidavit, to order a rule to issue calling on the Sheriff and his securities, to shew cause why a judgment should not be entered and an execution

Summary proceeding  
against Sheriff  
and securities.

issue thereon against them for the amount of any money proved to be due and unaccounted for by the principal, and on hearing the parties by affidavit to order execution to issue on the judgment accompanied by a direction that the personal estate of the Sheriff shall be exhausted before recourse be had to the real or personal property of the sureties.

**Return of Nulla bona to fi-fa against Sheriff.**

And further, that on a return of nulla bona to any writ against the Sheriff's effects, duly certified by the proper ministerial officer to whom its execution was entrusted, and notified by the Court into which such return was made to the Executive Government, such Sheriff should be immediately removed from office unless he could show that such return was false or made by consent of parties.

**Sheriff must be a party to suit.**

And further, that in any action or proceeding instituted against the securities of any Sheriff, such Sheriff being alive and in the Province, should be a party to the same and be primarily answerable.

**Decease of Sheriff.**

The Committee would further recommend that on the decease of any Sheriff during his tenure of office, the Deputy be required and empowered by law to complete the execution of all writs which shall have come to the hands of his principal, and to execute, seal and deliver, in his own name as Deputy, all deeds and assignments requiring to be executed, and which the deceased Sheriff, if living, would have been called upon to execute, and to act to all intents and purposes as Sheriff until a

new appointment be made, and a writ of discharge be regularly served upon such Deputy, according to the form prescribed in England on a change of Sheriffs.

From the information received by the Committee in the course of its investigation, it is induced to recommend the propriety of introducing into any new enactment on the subject of the office of Sheriff, a clause requiring all Deputies, Bailiffs, or other Sheriffs' officers, previous to taking upon themselves any ministerial duties, to take certain oaths, to be prescribed by Statute, to the general effect, that they shall not under any pretence, directly or indirectly, purchase any thing exposed at Sheriff's sale, or take in any shape or form any extra fees, costs, or charges from any Defendant or Defendants beyond the legal charges at present allowed, or postpone sales without good and sufficient reason and due notice being given. And further, that every Sheriff, Deputy or Bailiff, shall, at each and every sale, deliver to the Defendant or Defendants a schedule of the debt, interest, costs and fees charged by him. And to enforce the due observance of these provisions, the Court should have the power of interfering summarily and imposing fines and sentencing to imprisonment, when, in its judgment, the conduct of the party complained against may deserve such punishment.

The Committee having thus suggested several alterations in the existing laws relating to the office of Sheriff, which it considers desi-

Oaths to be taken by Deputies and Bailiffs.  
See Appendix:  
Letters of  
Mr. J. G. Spragge,  
" B. Dougal,  
" J. Wilson,  
" J. H. Cameron.

Recommendations in favour of Sheriffs.

rable to guard the interests or suitors, and which it is disposed to think may also prove beneficial to Sheriffs, (inasmuch as those officers will be thereby in a great measure deprived of the power of exercising a discretion, the too frequent indulgence of which, in the execution of process, has been principally instrumental in producing difficulties, embarrassments, and expence to these officers,) now deems it necessary to offer some suggestions of measures which shall protect them in the fair and proper discharge of their duties. The laws which enable persons arrested to give bail on mesne process, or for the limits, seem to the Committee to require some amendment and relaxation in favor of Sheriffs.

**Taking Bail.**

That officer in accepting bail is at present obliged to rely very much upon the representations of parties of their own responsibility, and it often occurs that from a doubt of the sufficiency of such bail, the Plaintiff refuses to take an assignment of the bond, preferring to look to the Sheriff in case of an escape from the limits or failure to enter special bail.

It may sometimes happen too that Bail, who are in good circumstances when accepted by the Sheriff, may become insolvent, and there are no means by which a Sheriff can compel a person on the limits to renew his securities, or by which he can be relieved from his responsibility in case of an escape.

The Committee, without interfering with the discretion of the Sheriff in the acceptance of

bail, would suggest, that if any reasonable doubt should be entertained by him as to the circumstances of any person offering to become bail, he should not be compelled to accept of such person until, if required, he has justified in the usual manner and given the Sheriff due notice of such justification.

It should also be in the power of the Sheriff, in the event of the death or insufficiency of any bail for the limits, to apply to the Court or a Judge in vacation, on an affidavit of facts, for an order to take the Defendant into custody, and if necessary to keep him in close confinement till the bail shall have justified and been allowed by the Court or Judge, or until such new bail may be given as shall be satisfactory to the Sheriff.

The Committee having recently had under consideration judicially several cases of extreme hardship arising from escapes from an insufficient Gaol, where the parties were in execution, feels called on to suggest the justice and fairness of confining suits against the Sheriff for escapes through constructive negligence, as for prison breach or escape under circumstances in which no culpability attached to the Sheriff, Jailer, or other Keepers, to actions on the case according to existing laws, when the escape is on mesne process, but leaving the present remedy of debt, when the escape shall be voluntary or positively negligent.

The Committee would further recommend that, in all actions against the Sheriff for

Escapes on final process.

Action for money had and received.

money had and received, especial request should be laid and proved as part of the plaintiff's case.

Depositing of  
Moneys in Char-  
tered Banks.

With respect to the third head of its instructions, the Committee can but express its opinion, that the moneys of suitors, coming into the hands of Sheriffs, should be promptly paid over to the parties entitled, and that but few instances are likely to occur to warrant such moneys being deposited, as suggested, in one of the Chartered Banks.

Moneys collected  
for Crown.

In pursuing the investigation required by the fourth head of its instructions, to ascertain if the moneys collected by the Sheriffs, on behalf of the Crown, are regularly and promptly transmitted by them to the Receiver General; and, if not, to suggest such arrangements as will best ensure punctuality and exactitude, the Committee has not been able to arrive at the actual state of this head of public accounts.

With respect to fines and estreats, the Committee has availed itself of the only means in its power of obtaining the necessary information, and has attempted, by prosecuting inquiries in the offices of the various Sheriffs of the Province, in the Receiver General's Department, and in the office of the Clerk of the Crown and Pleas, to ascertain the manner in which these contemplated aids to the Public Revenue are levied and accounted for.

See Appendix :  
Letter of  
Receiver General,  
Returns of Clerk  
of Crown, and  
Returns of various  
Sheriffs.

By an Act, entitled "An Act for the more convenient recovery of Estreats," 7 Wm. 4, chap. 10, certain regulations are enacted which, if rigidly observed, the Committee has every reason to believe would have ensured clearness and punctuality in this branch of the Public Resources.

It is much to be feared, however, that the salutary provisions of this Act have been but very partially observed, and that great laxity and irregularity have crept in, to the injury of a system wise and beneficial in its original conception.

The plan laid down under this Act is as follows: Within a certain period after any Court of Oyer and Terminer, or General Gaol Delivery, or Court of Assize and Nisi Prius, the Clerk of Assize shall make out a Roll in duplicate of all fines, issues, amerciaments, and forfeited recognizances, set, imposed, lost, or forfeited at such Court, one copy of which Roll is directed to be transmitted to the office of the Clerk of the Crown and Pleas, before the first day of the following Term, and the other sent with the writs directed by the Act to issue, to the Sheriff of the District. The fines so imposed at the Quarter Sessions are likewise directed to be entered by the Clerk of the Peace on a Roll in duplicate, one copy of which, with the same writs, is sent to the Sheriff to enforce collection, and the other copy remains in the office of the Clerk of the Peace. The Sheriff

Roll in duplicate  
of all fines to be  
made out.

**Sheriff to pay moneys over to Receiver General.**

is required by the Statute, without delay, to pay over all moneys by him collected to the Receiver General.

Now it would appear that were these provisions carefully observed, but little difficulty or derangement would be experienced in the collection and payment of estreats, fines, amerciaments, and other similar impositions. But the terms of the Act do not appear to have been complied with. Returns therein directed to be made by the Sheriff to the Clerk of the Crown and Pleas, and payments to the Receiver General of the Province by the same officers, seem but rarely to have been considered necessary.

**Committee recommends penalty in cases of non-observance of provisions of Act.**

The Committee recommends that the various clauses of the act above quoted, which direct certain acts to be done by the Clerks of Assize, Clerks of the Peace, Sheriffs, and other ministerial officers, should be accompanied with an adequate penalty for the non-observance of any of its provisions, and that in addition the Clerk of the Crown and Pleas be directed to furnish semi-annually, copies of all rolls of fines, estreats or amerciaments transmitted to his office, as by law now directed, to the Inspector General of Public Accounts, and that the Clerk of the Peace in each District shall also, under a penalty, be directed to return in like manner, to the Inspector General copies of all rolls of fines, estreats, &c., from the Quarter Sessions of his District; and that each Sheriff should likewise semi-

annually transmit to the Inspector General a copy of all rolls sent to him for collection, noting on each what had been done, whether levied according to the exigency of the writ placed in his hands, or remitted or stayed by the intervention of some competent authority.

In this manner, it is conceived that any abuses in the system of collecting fines, es-treats, and amerciaments may be more easily detected, by giving to the Inspector General an opportunity of checking the returns from the various Sheriffs and those received through the Clerk of the Crown and Pleas, and by a reference to the office of the Receiver General at once discover the existence of any want of punctuality, neglect or error.

The fifth head of instructions to this Committee, requires it "to inquire into the mode and expense of carrying prisoners from one place to another, and to suggest any measures of improvement that may seem to them expedient."

From the various Sheriffs in the Province, the Committee has obtained considerable information on the subject of the conveyance of prisoners.

Those sent by sentence of a legal tribunal from the Public Gaol to the Provincial Penitentiary, constitute the chief subject of the Committee's inquiries.

From the returns laid before the Committee, it appears that great and hardly reason-

Transport of  
Prisoners.

See Appendix :  
Return of several  
Sheriffs.

able expense attends the periodical transport of the very few felons sent from each District.

The Sheriff or his Deputy, with one or more assistants, attend the prisoners on their passage, and the charges of each individual by the ordinary means of conveyance by land and water, forming in almost every case a most serious aggregate of expense, are presented by the Sheriff for audit to the Magistrates of the District, and defrayed by an order from them on the District Treasury.

Heavy as those charges certainly appear, the Committee finds a great difficulty in suggesting any means of controlling excess.

District Magistrates guardians of local funds. The District Magistrates, as guardians of the local funds, are doubtless the proper persons to examine, detect, and refuse any extravagance, and must be presumed, in the absence of testimony to the contrary, to execute their duty impartially and with sufficient exactness.

The Committee would however venture to recommend, that the Magistrates of each District should be directed to prepare a tariff of fees to be allowed to the Sheriff for the conveyance of prisoners generally, and on all occasions, when accounts are submitted for audit, to allow such reasonable charges as strict economy and justice would seem to warrant.

By the sixth head of its instructions, the Committee is directed "to report generally on the state of Public Gaols, and the system of discipline pursued in them."

In pursuing its investigations on this important subject, the Committee has been necessitated to ground its report on the information collected, by administering interrogatories to, and requiring returns from, the various public functionaries entrusted with the controul and regulation of the Gaols, and from the personal knowledge of its constituent members, acquired on their periodical circuits, on which occasions the condition of those institutions is generally made the subject of a Report from the Grand Inquest of the District.

The Committee is deeply sensible of the imperative necessity that exists of placing those receptacles for crime and misfortune under a well-regulated and wholesome discipline, and subject to the constant superintendence of some active and efficient inquisitorial power.

Gaols should be placed under well-regulated discipline.

A full and satisfactory exposition of the present state of the Public Gaols, and an abstract of our Prison Discipline can only be obtained by the operation of an active and zealous system of local inquiry, conducted with ability and regularity, and armed with sufficient power to prosecute its investigation with impartiality and effect.

After a brief commentary on the present state of the Gaols, so far as may be warranted by the information before the Committee, it is proposed to give the outlines of a plan calculated to effect the desired object of

calling into existence an efficient system of superintendence over those most important Public Institutions.

As the members of the Committee have frequently, though not uniformly, visited the several Gaols of the Province when on circuit, the following may be taken as an epitome of their general knowledge of their accommodations and conditions :

**Gaol at Sandwich.**  
See Appendix :  
Letter of Sheriff.

The Gaol at Sandwich, in the Western District, is reported by the Sheriff as too small and insecure. But it has always been considered to be well managed by its old and respectable keeper, and has been found clean and in apparently good order on personal inspection.

**Gaol at London.**

The Gaol at London is small, incommodeous, and, as the Committee believes, unsafe, and so inadequate that the complaints of persons therein confined, of the loathsome cells in which they are incarcerated, need create no surprise in those acquainted with its actual condition. A new Gaol is however about being erected.

**Simcoe.**

The Gaol at Simcoe is new, and sufficient for the wants of that District.

**Hamilton.**

The Gaol at Hamilton, in the Gore District, is much too small for the accommodation of the numbers therein confined, so much as to preclude any attempt at classification. Its management has been generally represented as tolerable.

The Gaol at Niagara is offensive and Niagara. insufficient ; the site may be considered as ineligible, making drainage difficult if not impossible. It is remote from the Town. The Committee is of opinion that a new Gaol, on a well-designed plan and favourable situation, is highly desirable.

A new Gaol is being erected in the Home Toronto. District ; the present one is quite insufficient for the proper accommodation of its numerous prisoners. There is reason to believe, however, that under the present keeper it is well managed, and the comfort of the prisoners as carefully attended to as circumstances will permit.

The Gaol of the Newcastle District is new, Newcastle. sufficiently commodious, and well managed.

The Gaol at Picton is reported as sufficient for the wants of the District of Prince Picton. See Appendix : Letter of Sheriff. Edward.

The Gaol at Kingston is reported as sufficiently large to accommodate the average number of prisoners confined ; clean, well ventilated, and healthy ; but of such defective construction as to preclude proper classification.

The Gaol at Brockville has been always Brockville. well managed, but its accommodations are much too limited, and the erection of a new one is much to be desired.

The Gaol at L'Orignal is small ; sufficient L'Orignal. See Appendix. for the present accommodation of prisoners,

though represented by the Sheriff as being insecure.

Cornwall.  
See Appendix.

The Gaol at Cornwall is reported by the Sheriff as sufficient for the accommodation of prisoners.

Perth.  
See Appendix.

The Gaol at Perth is reported to be sufficient for the proper accommodation of prisoners.

The erection of Gaols is at present regulated by the Provincial Act, 1st Vict. ch. 5. By that enactment it is provided that the plan of every future Gaol erected in the Province shall be approved of by a Board of Commissioners created by that Act; the Commissioners are empowered to frame rules and regulations for the management of such Gaols, to be transmitted by them to the Lieutenant Governor, and by him laid before each branch of the Legislature; they are also required to report annually to both Houses of Parliament.

The provisions of this Act, so far, do not seem to have been regularly complied with. The absence of any provision in the Act for the appointment or payment of a Secretary or Clerk to the Commissioners may assist to account for the apparent omission.

Appointment of  
Secretary or Clerk  
recommended to  
Board of Commis-  
sioners.

If it be desirable to render the Board of Commissioners appointed by this Act efficient, the Committee would take this opportunity of representing the necessity of such an appointment as an indispensable preliminary to the usefulness of the enactment.

It is proper, however, to explain that the Commissioners under this Act have frequently met to consider and approve of plans submitted for proposed Gaols in the new Districts, and that several are now being erected under the approbation of this Board, as at Woodstock, in the intended District of Brock; at Goderich, in the District of Huron, and at Barrie, in the District of Simcoe; and a plan is at present before its consideration for a Gaol at Bytown, in the contemplated District of Dalhousie.

Under the provisions of the 1st Vict. ch. 5, no building could be used as a Gaol without the approbation of the Board of Commissioners to whom allusion has just been made. The Committee is not aware of any Gaol now used as such that has been built under the provisions of that Act.

Many of the old Gaols in the Province are insufficient in accommodation and other requisites; some are sufficient, and some could doubtless, by judicious alterations, be made adequate to the wants of the Districts.

Many of the old  
Gaols insufficient.

The Committee, therefore, in addition to the amendment it has already proposed to the 1st Vict. ch. 5, would venture to recommend the following course to be pursued, for the purpose of supplying the present palpable deficiency of an active and vigilant Prison Superintendence.

It recommends that the Executive Government should be authorised by the Legislature

Commissioners for  
local investigation  
of Gaols recom-  
mended.

to appoint a Commissioner, or Commissioners, to prosecute a system of local investigation of every Gaol in this Province now in use; and for that purpose to examine on the spot the keeper of such Gaol, or his assistants, or any person or persons from whom information relevant to the subject of his inquiries might be obtained; and from such a process of examination, and from personal inspection, to draw up a correct report of the plan, size, situation and construction of the Gaol buildings—the cells used for the confinement of criminals—the accommodation for debtors—the system of internal discipline pursued—the hours observed—the allowance of food, bedding, and other necessaries—the salaries of the Gaol keepers and assistants—and generally every thing relating to the moral and physical condition of the inmates.

Commissioners to  
report to Execu-  
tive Government.

It should then be the duty of such Commissioner to transmit such report to the Executive Government respecting each separate Gaol—and therein suggest any improvement of which the existing system could be found susceptible.

To render his means of investigation complete, the act should inflict a penalty on any one obstructing the Commissioner in his labors, or refusing to attend him to give evidence, and to give summary jurisdiction to one or more Justices of the Peace to hear the complaint and proceed to conviction of the party offending.

The act should also prescribe the manner in which the expenses and remuneration of such Commissioner should be provided for.

The Report of the Commissioner on each Gaol should then be transmitted by the Executive Government to the Commissioners appointed under 1st Vict. chap. 5, who should forthwith return their written opinion on the propriety and practicability of the alterations suggested.

The Executive Government should then have the power to direct the Magistrates of the District in general Quarter Sessions assembled, wherein the proposed alterations are required, to proceed to the carrying into effect the same, and they should be empowered and required, if necessary, to impose a rate not exceeding a certain fixed amount on the District, to defray the expense of the meditated improvements.

Such an amendment to the existing law, if resolved on, might be submitted without delay to the consideration of the present session of legislature, and no time be lost in attempting its enactment.

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## THIRD DIVISION.

## CLERK OF THE CROWN AND PLEAS.

With respect to the last head of its instructions, relating to the office of the Clerk of the Crown and Pleas, a majority of the Committee is not prepared to recommend any change in that department which would substitute fixed salaries for fees.

By the following rules ordered by the Court of Queen's Bench in last Michaelmas Term, it is conceived that a salutary change can be effected in that department, and that an adherence to the method of obtaining annual returns from the Clerk of the Crown, will enable the Court periodically to make any advisable alteration in the amount or nature of that officer's emoluments :

*Rules of Michaelmas Term, 1839.*

1. "It is ordered by the Court that the Clerk of the Crown do, on the first day of Easter Term, annually lay before the Court a return of all fees received by him in his office, with an account of the respective services for which they are received ; and also an account of the Receipts of fees by his respective Deputies ; and also an account of the Disbursements of his office for clerks, stationary, printing, &c., and a return of salaries or allowance to Deputies and Clerks.

2. "It is ordered by the Court, that the Clerks of Assize and Marshals do, on the first day of Easter Term, annually return an account of all fees received by them respectively, with an account of the services for which they are received.

3. "It is ordered by the Court, that from and after this present Term, so much of the rule of Court as regulates the fees of the Clerk of the Crown, and Clerks of Assize

and Marshal, be rescinded, and that from thenceforth the following fees, and no other, shall and may be taken by those officers for the services respectively rendered by them."

These rules were accompanied by a new tariff of fees by which a considerable reduction was made in the fees of the Clerk of the Crown.

To the answers of that officer to the interrogatories administered by direction of the Committee, and appended to this report, it is referred for a view of the duties of the department.

Some idea may be formed of the alteration produced by the new tariff, from the following extracts from those answers :

Amount of Fees received during August, September, October and November, 1838, preceding the late alteration .....	£1005 0 0
Amount of Fees for the same period, 1839, since the alteration .....	589 0 0
Less .....	£416 0 0

Sufficient time, however, has not yet elapsed to enable the Committee to form a decided opinion as to the effect produced by the operation of the new tariff.

It appears to the Committee that sufficient accommodation is not afforded to this Department, and that the important Public Records deposited there cannot be considered as sufficiently protected from accidents by fire.

While the Committee must decline for the present recommending such a material change

See Appendix :  
Tariff of fees.

See Appendix :  
Answers of the  
Clerk of the Crown  
and Pleas.

Committee declines substituting salaries in lieu of fees.

in the Crown Office as the substitution of fixed salaries for the system now prevailing of reimbursing the incumbent by fees, it is anticipated that the Court of Queen's Bench will find no difficulty in, from time to time, effecting such judicious alterations as will prevent either unreasonable excess or diminution in the amount of the emoluments of that Department.

#### CONCLUSION.

In drawing to a conclusion the result of the investigations of the Committee, it may perhaps be well to remark that, had the time devoted to those inquiries been of a longer extent, some additional modifications and amendments might have been suggested from a more minute and protracted examination into the constitution and working of the Departments brought under the scrutiny of the Committee.

It rests, however, with the wisdom of the Legislature to estimate the practicability and anticipated usefulness of these suggestions, and through its intervention alone can the test of experience be applied to the many alterations recommended in the course of this Report.

All which is respectfully submitted.

(Signed)	L. P. SHERWOOD, J.
(Signed)	J. B. MACAULAY, J.
(Signed)	J. JONES, J.
(Signed)	A. McLEAN, J.

JUDGES' CHAMBERS,  
Toronto, December 28th, 1839. }

## RECEIVER GENERAL'S OFFICE.

THE Committee, from the Board of Commissioners constituted by virtue of a commission under the great Seal of the Province of Upper Canada, appointed to enquire into the state of the undermentioned offices, and the nature of the duties performed in each of them, viz., the Offices of the Receiver General of the Province,—the Commissioner of Crown Lands,—the Surveyor General of Woods and Forests,—the Secretary of the Clergy Corporation,—the Surveyor General of Lands,—the Chief Agent for Emigration,—the Agent for the sale of Clergy Reserves, and the subject of School Lands,—beg leave to report their proceedings for the information of the Board.

The Committee, after a careful inquiry into several of the subjects to which their attention was called, by the instructions issued for their guidance, beg leave to submit the following Report for transmission to His Excellency the Governor-in-Chief and Captain General of the Province of Upper Canada, &c. &c. &c.

Report transmitted  
to His Excellency  
the Governor-Gen.

## THE RECEIVER GENERAL'S OFFICE.

The state of the receipt in this office, on the 31st October last, was as follows:

From the Collectors of different Ports of Entry, .....	£7,906	1	3½
From Inspectors of Districts, .....	2,058	5	6
From Sheriffs, .....	255	5	4½
From District Treasurers, .....	18	2	1
Premium on Drafts on Montreal, .....	201	14	10
From the Secretary of the Clergy Corporation, on account of Rents of Clergy Reserves, .....	850	0	0
From the Honorable the Commissioner of Crown Lands, for Interest on sales of Clergy Reserves, .....	£815	11	10
From ditto, on account of proceeds of Sales of Crown Timber, .....	6,661	1	0
Proceeds of Sales of Government Debentures sold in Upper Canada, on account of the Macadamized Road from Kingston to Napanee, .....	1,988	17	9½
From the Hon. the Secretary of the Province, for Fees on the seal to commissions of appointment to places of honor and emolument, .....	49	0	0
Ferry Rents, .....	13	0	0
Fines from Magistrates, .....	8	0	0
From the Trustees of the Kingston and Napanee Roads, .....	302	0	0
From the do. West Gwillimbury Road and Bridge, .....	55	10	0
From the do. Johnstown District Roads, .....	80	0	0
From the Land Board of the Newcastle District, .....	7	13	6
From the Honorable Mr. Vice-Chancellor Jameson, being the unexpended balance of moneys paid him on account of Contingent expenses of the Commission of Enquiry, instituted in the late outbreak, .....	14	18	10
From the Trustees of the West York Roads, Militia Commissions, .....	340	0	0
do. Exemption Moneys, .....	157	0	0
do. Fines, .....	68	10	0
	49	16	8

From Magistrates, for Ale and Beer Licences, .....	8	0	0
Land fees under all regulations, .....	864	11	6
Proportion of Import duties from Lower Canada, .....	36,342	0	8
	£59,115	0	10

The Receipts from Collectors and Inspectors of Districts are not credited to their proper funds until a distribution thereof has been made at the office of the Inspector General of Public Accounts.

The Receiver General cannot, therefore, at any time inform the Government of the state of the Receipt under the separate heads of Provincial Revenue, or Casual and Territorial Revenue, should such information be desired.

The payments made by the Commissioner of Crown Lands, the Agent for the sale of Clergy Reserves, and the Secretary of the Clergy Corporation, have hitherto been irregular; the officers in charge of those several offices have usually waited to make such payments until a large sum had accumulated.

The Revenue received from Lower Canada is carried in gross to the public credit, and the premium on Exchange is afterwards credited when the same is drawn for; in the meanwhile large balances remain in the hands of the Agent appointed by the Receiver General, at the personal risk of that office.

The Provincial funds are appropriated under the authority of acts of the Legislature.

Receiver General cannot give information as to receipts of Provincial Revenue under separate heads.

Large balances remain in hands of Agent appointed by Receiver Gen'l.

Crown funds subject to orders of Treasury, Colonial Department, and Lieutenant Governor in Council.

The Crown funds are subject to the orders of the Treasury, Colonial Department, and Lieutenant Governor in Council, all payments being made under warrants of the Lieutenant Governor; excepting the Lieutenant Governor's allowance in lieu of fees, the percentage to the agent in Lower Canada, and agency for the receipt and payment of the Canada Company fund, which payments are respectively made under His Majesty's warrant of 29th September, 1812, the 1st Wm. 4th, chap. 15, and the Treasury estimate and letter dated 31st August, 1827.

The general check established at present in the office, is, the balance sheet of all the different public funds compared periodically with the Day or Cash Books.

The returns of sub-accountants to the Inspector General, enable that officer to check the payments made under the head of Provincial Revenue, but no returns are made of land fees, fines, ferry rents, Militia fees, and various other sources of Revenue.

Payments made require a check.

It appears necessary, for the more effectual checking all such payments, that Returns of the amounts levied, or which ought to be paid to the Receiver General, should be transmitted to the Inspector General, by an authority other than the one making the payment; thus, for instance, payments to be made by the Sheriff may be checked by a return from the Clerk of the Peace.

The Balance in the hands of the Receiver General on the thirty-first of October, was £41,496 0 4½, of which sum £4299 6 1, was lodged in the Bank of Upper Canada, at the credit of the Honourable John Henry Dunn, subject to the drafts of the first clerk then in charge of the office, and £367 19 11½ remained in the office chest.

The Receiver General claims a deduction of about £10,560 from the balance of £36,828 14 4, on account of a payment, said by that officer to have been made to Messrs. Glynn, Halifax, Mills & Co., of London, about one year since; but which does not appear on the Books of the office, nor has any acknowledgment of its receipt been yet officially made by those gentlemen. The remainder of the balance, viz., £26,268 remained in the hands of the Receiver General's agents in Montreal, as stated by that officer, who has declined to produce evidence thereof by exhibiting the account current of his agents, alleging that his transactions with those gentlemen are entirely of a personal character.

The Committee are of opinion that the present system under which the whole of the public moneys are permitted to stand at the credit of the Receiver General, as a private individual, without having in his office any book or account which would shew where the balance due to the public, or any part thereof, was deposited, requires prompt amendment.

Receiver General's  
transactions with  
Agents of a per-  
sonal character.

Present system  
requires amend-  
ment.

As regards the mode of managing the business, and keeping the accounts in future in the Receiver General's office, the Committee fully concur in the suggestions contained in the report of Mr. T. C. Patrick, which accompanies the minutes of evidence taken by the Committee.

The several conclusions to which the Committee have been led, after a full consideration of the subject upon which they have deliberated, may briefly be thus set forth :

**1st.** That all public moneys should be, as far as practicable, paid directly to the Receiver General.

**2nd.** That a system of Book-keeping, on the principle of Double Entry, as suggested in the report of Mr. T. C. Patrick, should be introduced into the office of the Receiver General.

**3rd.** That so much of the 1st Wm. 4, chap. 15, as authorises the payment of a per centage on moneys received in Lower Canada on account of this Province, should be repealed.

**4th.** That a secure place of deposit should be selected by the Executive Government, wherein the Receiver General should be required to deposit, at least once in every week, the moneys received by him.

**5th.** That sub-accountants making payments to the Receiver General should be required to state on what account such payments are made, in order that they may at once be credited to the proper fund.

All public moneys  
should be paid to  
Receiver General.

Sub-accountants  
should state on  
what account pay-  
ments are made.

6th. That all future money transactions shall be directly under the controul and direction of the Executive Government.

Money transactions in control of Executive Gov.

7th. That all agents employed by the Receiver General to dispose of Debentures, pay dividends thereon, or transact any public business connected with his department, shall be required to transmit a half yearly account current to the Inspector General of Public Accounts.

Half yearly acc'ts to be transmitted to Inspector General.

8th. That no moneys whatever shall at any time be disbursed by the Receiver General excepting under the authority of a warrant from Her Majesty or Her Representative within this Province.

Receiver General to disburse only warrant.

9th. That the first clerk in this office shall do the duties of cashier, conduct the correspondence, and generally, under the orders of the Receiver General, superintend the business of the office.

First Clerk to be Cashier.

10th. That a Book-keeper be added to the present establishment of the Receiver General's office.

Book-keeper.

11th. That in the event of a Bank being selected as a place of deposit, the officers of the Bank shall be instructed not to cash any draft or check drawn by the Receiver General, in his public capacity, unless the same shall quote the letter and number of the warrant covering the payment.

In cashing drafts warrant must be quoted.

12th. That a half-yearly payment of interest on the Debentures issued within this Province be made on the 30th June and 31st December.

Interest on Debentures be paid half yearly.

As regards the mode of issue of Debentures and the general management of Public Debt within the Province, the Committee have no recommendations to offer,—that branch of business appearing to be conveniently and satisfactorily performed.

The Committee are of opinion that the Debentures yet unsold in London ought not to be disposed of, excepting under the direct sanction of the Executive Government, and that if a Bank be selected as a place of deposit for the public moneys, such Bank should be required to furnish funds in London for the payment of the interest due in Provincial Debentures at a fixed rate of exchange, as compared with the price obtained by the Commissary General.

The Committee, having ascertained from the Report of the Inspector General of Public Accounts, that not more than £15,000 of securities, other than the personal Bonds of the Receiver General, are now held by him on behalf of the Province, and that £5000 of that sum is of a doubtful validity, beg to call the attention of the Executive Government to this point.

The Committee are of opinion, that the sum of £15,000, together with his personal bonds, is a sufficient amount of security to be given by the Receiver General within the Province, the more especially, because, if the suggestion of the Committee be carried out,

Debentures unsold  
in London should  
be disposed of only  
on conditions.

Attention called to  
Receiver General's  
security.

£15,000 sufficient,  
as liabilities are  
diminished.

the liabilities of the Receiver General will be greatly diminished, and the responsibility of the office equally reduced.

The Committee cannot close their Report, on the Receiver General's Office, without calling the attention of the Executive Government to their Reports to the Lieutenant Governor, and to the Governor General, dated the 14th, 19th, 25th, and 29th November.

All which is respectfully submitted,

(Signed)                    W. ALLAN,  
                                  *Chairman.*

INVESTIGATION COMMISSION,  
COMMITTEE, No. 2,  
*9th December, 1839.*



OFFICE OF THE  
SURVEYOR GENERAL OF LANDS.

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THE Committee have obtained such complete and full information touching the business of this office, from the answers appended hereto, that they prefer referring to the evidence of those gentlemen rather than, by giving a summary of their answers to the questions prepared by the Committee, prevent their careful perusal.

Full information obtained.

The Committee, however, deem it proper to call the particular attention of the Government to the third, fourth, seventeenth, nineteenth, twenty-fifth, twenty-sixth, and thirtieth answers of Mr. Spragge, from which they submit the following extracts:—

“Locations were until within the last few months exclusively the duty of Mr. Spragge—many of them are now made by Mr. Radenhurst, whose interference with that branch of duty has had for its object the bestowing, on favoured individuals, lands directed by Order in Council to be disposed of at public sale by the Commissioner of Crown Lands.

Extracts of  
answers to queries  
of Committee by  
Mr. Spragge, of  
SurveyorGeneral's  
Office.

“I cannot regard the organization of the department as by any means satisfactory. With a thorough knowledge of the books and documents as they are at present, time is unnecessarily consumed in obtaining information on points connected with the claims of individual enquirers, and which,

when procured, is far from affording on all occasions the information desired, and uncertain in the results they might be expected to exhibit.

**Business often assumed as correct without being so.**

“The statements of persons applying have, to *save trouble*, oftentimes when business pressed been assumed as correct when a careful examination would have yielded a different result; copious indexes of a permanent nature are requisite, and a compilation of other books of record from the books and plans now in use, should, it appears to me, be formed without further delay.—I also find it necessary to remark on the necessity which exists for the introduction of system in the management of the office. Mr. Acting Surveyor General Chewett, and afterwards Mr. Macaulay, used their endeavours to apportion the duties and establish an improved system; but on both occasions, impediments were thrown in the way of the intentions of these gentlemen being carried into effect.

**Rigid supervision required.**

“Furthermore, nothing is more imperatively called for, than a continual and rigid supervision upon the transactions of the Department, to prevent a continuance of practices discreditable to the Department and prejudicial to the interests of all but a few. Probity and impartiality are among the necessary qualifications of a public servant.”

**Query 17.** Are the same conditions exacted from the claimants under the Heir and Devisee Commission, in respect to the terms of the Grant, as the original Nominee or Grantee would have been required to comply with?

**Lands described without authority.**

“*Answer.* Without any authority permitting such a proceeding, lands allowed under the commission have of late, with scarcely an exception to the contrary, been allowed to go into description without the original requirements being exacted.

“Many years since, names were entered on the plans without the location being entered in the warrant book, or endorsed on the authority. This mode of proceeding, of course, had the effect of excluding many persons wishing to locate

from lands which they ought to have had, if they desired them; as there was no method of ascertaining whether a person was or was not entered for the lands he was entitled to, the same name frequently remained on the plans when the party had taken up his complement of land elsewhere.—I have been told that official persons had memoranda of these double entries, and took off the names as they were prepared to put others on.

Double entries.

“These double locations are continually going out under the commission. Some months since I completed a return of all lands located prior to 1833, which had not been described for patent, and found many names entered on the plans without any authority to cover them. Parties pretending to claim them under the original nominees of the lots before the Commissioners or the Council, have, nevertheless, succeeded in obtaining patents by means of the incorrect reports of the office.

Names entered  
without authority  
to cover them.

“The brief period which has elapsed since the passage of the boundary line act, is scarcely sufficient to justify an opinion upon its practical effects, especially as the Surveyor General’s Office has not been furnished with copies of the awards of the Commissioners appointed under the act; dissatisfaction has in some instances been expressed by individuals affected by their decision, but this is unavoidable. When the bill was under discussion in Parliament, it appeared to me that a clause should have been introduced requiring the Commissioners to obtain from the office of the Surveyor General such information relative to original surveys, as would have enabled them to adjudge in all matters in dispute conformably thereto. The number of applications for such information up to the present time has not exceeded five or six.

Boundary Line  
Commissioners  
Act.

“It appears to me that an uniform mode of proceeding on the part of the Commissioners is particularly desirable, but few of the gentlemen appointed can be conversant with practical surveying, or acquainted with the manner in which the original surveys were conducted, and they would doubtless have derived material aid from the circumstance, had the act authorised the Surveyor General to issue general instructions to each Board of Commissioners, guiding them in regard to disputed surveys within their respective spheres of duty.

Instructions should  
issue to Commis-  
sioners.

Crown Lands' Office not much improved since managed by Mr. Robinson.

"The business of the two Departments of Surveyor General and Commissioner of Crown Lands, has remained as perfectly distinct as they were previously to their being placed under one head in charge of both—it amounts to but a nominal union and consequently has in no material way affected the business of the Surveyor General's Office. Having had the best opportunities, almost from its first establishment, of daily observing the manner in which the business of the Crown Lands' Office was conducted, it is impossible to speak in terms of commendation of its management under Mr. Robinson; since which time many circumstances have intervened to prevent any very considerable improvements being effected, and I could never perceive the possibility that beneficial results could arise from the project of incorporating the Surveyor General's Office with a Department so constituted; and with reference to the Department to which I am attached, I can say, that the constant supervision of the Surveyor General is at all times needful, and that the duties of the office have been adequately performed and the affairs of individuals faithfully attended to, under those gentlemen only who have been enabled to devote their whole attention to the office. The manner in which the business is at present managed is the most irresponsible that can be conceived; and I cannot believe that the Crown Lands' Office can less require the immediate control of its chief than the Surveyor General's Office, and I am perfectly convinced that the public service will derive material benefit if the Departments be again separated.

Further consolidation.

"Were the further consolidation of the offices to be determined on, the only way in which it could be accomplished that I am aware of, would be to place the sales under the Surveyor General's Office, which the plans and the Doomsday Schedules and other books, with trifling additions, would enable it to undertake, and purchase money might be paid into the hands of a Special Receiver, or into the hands of the Receiver General direct. I believe the attempt, however, to continue the two offices under one Head of Department, will eventually prove to be the worst species of economy which could be attempted. The preceding queries having been framed with the view of eliciting information relative

to the practical working of the Surveyor General's Department, as at present constituted, I should not be justified in withholding any particulars which may throw light on the subject. The experience of the last eleven years, and minute examination and inquiry into the former organization and management of the Department, convince me of the existence of a system of partiality, favoritism and corruption, begun at an early day and continued with but few interruptions up to the present time. The wholesome regulations introduced by Government to promote the settlement of the Colony, founded on principles of general utility, have been defeated by the encouragement afforded by the Surveyor General's Department to monopoly and speculation, and the assistance rendered to those who desired to evade such restrictions as interfered with their projects for personal aggrandisement, at the expense of the resident proprietors of land. Personal residence and cultivation, it was declared by the Royal Instructions of 1783 and 1787, and Orders in Council of February 1789, were the only conditions upon which grants of land were to be permitted, and forfeiture of the grant was announced as the penalty of a non-compliance with these prescribed conditions.

Partially, favoritism, and corruption existing in the Department.

"The terms and conditions of settlement were of general import, and from which it cannot be shewn that it was ever intended that U. E. Loyalists or their children should be relieved. To carry into effect the measures of Government in relation to the settlement of the public lands, was the duty of every individual who accepted an appointment in the Land Department: but self interest has been with too many a stumbling block in the way of duty.

Self-interest a stumbling block to duty.

"The only means of information possessed by the Lieutenant Governor and Council, relative to the statement of individuals, is the report from the Surveyor General's Office; and it was, therefore, essentially necessary that these reports should be prepared by persons in no way interested in the issue of the applications.

"Instead of this being the case, from an early day to the present moment, they have been reported on by the paid agents of the parties whose hopes of future employment would cause them to feel a strong interest in the success of

Unjustifiable statements made by Department

the business they had taken in hand ; and I say it with a knowledge of the facts, that in numerous instances a colouring has been given and statements made which the circumstances of the case would not justify.

“ The senior Clerk continues to conduct a very considerable business in carrying through claims before the Heir and Devisee Commission, examining into the state of the lands claimed, and framing the certificates which should contain the facts of the case, is his particular duty. In every instance the certificate should state the authority under which the location was originally made, and the conditions to which it was liable. Instead of this being done, the report is made merely to certify that the name of the party under whom the lot is claimed is entered in the plan, and that no description has issued.—This is not the way in which such important business should be done ; the authority ought to be examined, and it should be ascertained whether the party may or may not have received all the land he was entitled to, and before any description be allowed to issue, it should be satisfactorily proved that the original conditions have been complied with.

“ It is my duty further to state, many lots situated in old Townships, which, under Orders in Council of 15th October 1833, and 19th November, 1835, were subject to be disposed of at sale by the Commissioner of Crown Lands, have been located by the senior Clerk to individuals without any special authority permitting the same. These are of course a part of his agency transactions, practised in the face of the Lieutenant Governor’s order of 14th June, 1808, and the Order in Council of 19th November, 1835, which forbid, in the most positive manner, agency being transacted by Clerks in Public Offices.

“ The power assumed by the gentleman alluded to, while it has been profitable to himself, has been unproductive of any good that would justify the daily infraction of rules and regulations established by Government for beneficial purposes, to ensure impartiality in the disposal and settlement of the public lands.

“ The official favour which he distributes, is such in its nature and amount as no head of the Department has ever

Original conditions should be complied with before description issues.

Senior Clerk has located Lands without special authority.

exercised or pretended, pertained to his appointment, his policy has secured for him a numerous band of partizans, as the best of names he was able to command, when soliciting at the hands of Sir Francis Head—the appointment of Surveyor General sufficiently testifies. Some of the gentlemen who lent him their influence on that occasion, did so without any knowledge of his merits or demerits, believing the representation of others in his favour, but the major part were individuals upon whom he had conferred personal obligations in matters connected with the Departments. What I have said proceeds from no unkindly feeling towards the senior Clerk, but will account for the firm conviction I entertain, and am bound to express that the duties of the Department will never be faithfully administered, until the office is placed under the charge and continual supervision of a Surveyor General."

Duties of Department will never be properly performed without the constant superintendence of a Surveyor General.

The Committee have not received any answer to the queries transmitted to the Surveyor General—they have only further to observe, therefore, that the grave charges contained in the answers quoted from Mr. Spragge's replies are corroborated by the testimony of Mr. Chewitt, to a certain extent; the nature of the charges preferred and the consequences of them, if established, to individuals, are so serious that the Committee feel themselves precluded from offering any opinion with regard to them, or to the changes which ought to take place if the system prove to be such as those charges would shew. They, therefore, abstain from submitting any suggestion on the conduct of public business in this Department, in the expectation that the matter will receive an examination before a tribunal possessing more extensive power of enquiry and determination than are invested in the Commission.

Committee abstain from submitting any suggestions for remedy.

Committee recommends that the Offices of Surveyor Gen'l and Crown Land Commissioner be not combined in one.

The Committee cannot, however, refrain from recommending, after the information they have received, and which is attached to this report, that the offices of the Surveyor General of Lands and Commissioner of Crown Lands, should cease to be held by the same person, inasmuch as the Committee are satisfied that the duties to be performed in the former Department will require the undivided attention of one efficient public officer.

All which is respectfully submitted,

(Signed)	W. ALLAN, <i>Chairman.</i>
(Signed)	W. H. DRAPER,
(Signed)	R. A. TUCKER,
(Signed)	JNO. MACAULAY,
(Signed)	J. S. MACAULAY,
(Signed)	H. SHERWOOD.

INVESTIGATION COMMISSION,  
COMMITTEE, No. 2,  
28th December, 1839.

OFFICE OF THE  
SURVEYOR GENERAL OF WOODS & FORESTS.

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The Committee have to observe, with reference to this office, that the instructions of the Lords of the Treasury for its Government have been wholly neglected, and to submit the following extract from the answer to their 6th query appended to their report on the Commissioner of Crown Lands Office.

Instructions of  
Lords of Treasury  
wholly neglected.

“I also enclose, herewith, the printed instructions issued Extract. to my predecessors, on the Department of Woods and Forests: they have not ever been followed, nor can they be consistently with the good of the public service. The system pursued has been reported on to the House of Assembly by Mr. Shirriff, whose son was appointed Collector.

“Mr. Charles Shirriff was said to be the founder of the Ottawa Timber Trade; he is a very intelligent man, and I believe the Government consider itself under many obligations to him on that account; in fact, almost the whole management of the Department was left to him without question or interference.

Mr. Shirriff founder  
of the Timber Trade.

“He, by entering into private speculations, such as building mills, &c., beyond his private means, involved himself in debt, and on the failure of the House of Gates & Co., and in the Commercial crisis of 1837, he became a defaulter.

Mr. Shirriff a  
defaulter.

“I shall transmit to the Committee a copy of my report upon this subject, which I made on placing the matter in the hands of the Attorney General.

“When I was directed to assume the charge of this Department, I found an approved system in operation, and I only altered it as regards the money transactions, and in requiring the new Collector to give security to the Government, which he has done.”

The Committee are of opinion that the instructions before mentioned, should not have been set aside without a distinct authority; and they recommend that the proceeds of sales of Crown Timber, should in future be paid to the Receiver General, in the form in which it may be found convenient to receive it at Bytown; and that the promissory notes so taken, should be handed for collection to one of the Chartered Banks, with instructions that all such notes not taken up at maturity, should be forthwith placed in the hands of the Attorney General for collection. The Committee offers this suggestion under the assumption that the present mode of conducting the business of this Department may be continued, but they are of opinion that payment should be rigidly exacted at Bytown, and that no timber should be permitted to pass that port until the duties were paid.

In consequence of the Surveyor General of Woods and Forests having become a sub-accountant contrary to the instructions of the Lords of the Treasury, and not having required periodical payments and accounts to be rendered by the Agent at Bytown, a large defalcation has occurred in the case of Mr. Shirriff, which has been fully reported on by the Surveyor General of Woods and For-

Instructions should  
not have been set  
aside without  
distinct authority.

Payment of duties  
on Timber should  
be paid at Bytown.

Agent become a  
defaulter.

ests, to Her Majesty's Attorney General, a copy of which report is hereunto annexed.

All which is respectfully submitted.

(Signed)	W. ALLAN, <i>Chairman.</i>
(Signed)	W. H. DRAPER,
(Signed)	R. A. TUCKER,
(Signed)	JNO. MACAULAY,
(Signed)	J. S. MACAULAY,
(Signed)	H. SHERWOOD.

INVESTIGATION COMMISSION,  
COMMITTEE, No. 2,  
28th December, 1839.



OFFICE OF THE  
AGENT FOR THE SALE OF CLERGY RESERVES.

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THIS Office having been hitherto held by the Commissioner of Crown Lands, the Committee have no observations to make thereon, excepting that the same faulty system of Book-keeping adverted to in their Report on the Office of the Commissioner of Crown Lands prevails also in this Office, and consequently a complete re-statement of the accounts from the commencement is equally required.

All which is respectfully submitted.

(Signed)	W. ALLAN, <i>Chairman.</i>
(Signed)	W. H. DRAPER,
(Signed)	R. A. TUCKER,
(Signed)	JNO. MACAULAY,
(Signed)	J. S. MACAULAY,
(Signed)	H. SHERWOOD.

INVESTIGATION COMMISSION,  
COMMITTEE, No. 2,  
28th *December*, 1839.

H



OFFICE OF THE  
SECRETARY OF THE CLERGY CORPORATION.

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THE Committee made due enquiry into the nature and extent of the business transacted in this department, and, having ascertained that, although the Clergy Corporation still exists, its action as a body has long ceased, recommend that the general charge of keeping the accounts relating to the sale of Clergy Reserves should be henceforth coupled with the duties of Secretary to the Clergy Corporation, and that the Secretary's Office, as an independent establishment, should be no longer continued. The Committee submit the above recommendations because they conceive that to retain a Secretaryship to a quasi non-existing corporation is unnecessary, and that the duties of the Secretary are insufficient to occupy the time of the gentleman now holding that office, with whose mode of conducting the business of the office they are perfectly satisfied.

A statement of the receipts and debts now due the Clergy Corporation is hereto appended.

Charge of keeping  
the accounts of  
Sale of Clergy  
Reserves to be  
coupled with the  
duties of Secretary.

The great amount of rents due to the Clergy Corporation cannot fail to arrest the attention of Government, and to call for the adoption of prompt measures to ensure its liquidation.

All which is respectfully submitted,

(Signed)	W. ALLAN, <i>Chairman.</i>
(Signed)	W. H. DRAPER,
(Signed)	R. A. TUCKER,
(Signed)	JNO. MACAULAY,
(Signed)	J. S. MACAULAY,
(Signed)	H. SHERWOOD.

INVESTIGATION COMMISSION,  
COMMITTEE, No. 2,  
28th December, 1839.

OFFICE OF THE  
CHIEF AGENT FOR EMIGRATION.

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THE Committee, having addressed certain queries to the Chief Agent, submit the same, together with his answers, for the information of the Government.

The duties of the Agent at present consist chiefly in keeping the accounts of the persons authorised to distribute the bounty of the British Government to distressed commuted pensioners; these duties are both laborious and responsible, and in the absence of any business directly pertaining to his office as connected with emigration, sufficiently employ the time of the Chief Agent.

Duties of the Agent.

The Committee recommend, therefore, the continuance of this office on its present footing, hoping that at no distant period his services as an Agent for Emigration will again be required.

All which is respectfully submitted,

(Signed)	W. ALLAN, <i>Chairman.</i>
(Signed)	W. H. DRAPER,
(Signed)	R. A. TUCKER,
(Signed)	JNO. MACAULAY,
(Signed)	J. S. MACAULAY,
(Signed)	H. SHERWOOD.

INVESTIGATION COMMISSION,  
COMMITTEE, No. 2,  
28th December, 1839.



## COURTS OF REQUESTS.

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THE Committee appointed to investigate and report upon the Courts of Requests, and the Commissioners of those Courts, have the honor to submit the following Report :

The Courts of Requests are now constituted under the authority of the 3rd Wm. 4th, ch. 1, amended by 7th Wm. 4th, ch. 12.

Under the authority of these enactments, each District is separated into divisions, varying in number according to circumstances in the discretion of the Justices in Quarter Sessions, within each of which divisions a Court of Requests is to be holden by two or more Commissioners to be appointed by the Governor. The place of holding these courts rests with the commissioners.

Divisions of Districts.

Their jurisdiction extends over all matters of debt and contract not exceeding the sum of Ten Pounds, with power to award execution against goods and chattels, and their decisions are final between the parties.

Extent of their jurisdiction and their decision final.

The process is a summons, to which is attached a statement of the Plaintiff's account or demand. If the demand is under Forty Shillings, service may be made by leaving a

Mode of proceeding.

copy of the summons at the Defendant's residence ; if over Forty Shillings, personal service is requisite, unless the Defendant absents himself to avoid service ; when, in cases not exceeding Five Pounds, service at the dwelling house is sufficient. Defendants may be summoned from any part of the District in which they reside to appear in the division in which the debt was contracted.

Commissioners  
empowered to take  
evidence on Oath. The Commissioners have authority to take evidence on oath ; and if they desire it, in like manner to examine the Plaintiff or Defendant.

Defendants are allowed the privilege of setting off their demands against the Plaintiffs'.

Clerk and Bailiff's  
security. The officers to every such Court are a Clerk and a Bailiff, who give security for the due performance of their duties.

Witness. Witnesses may be summoned who reside out of the division, and the allowance to such witnesses is in the discretion of the Commissioners.

Executions. Executions may be enforced against the property of a debtor within any part of the District in which judgment was rendered against him. When the judgment is for a sum exceeding Forty Shillings, execution (with certain exceptions) is to be stayed forty days.

Bailiff's remune-  
ration. The Commissioners' Clerks and Bailiffs are paid by fees, a table of which is contained in the Statutes.

Bailiff and Clerk  
subject to an action  
in certain cases.

An action lies by the party injured against the Clerk or Bailiff for misconduct in office upon the security given by them respectively.

Under the provisions of this Act there were, in the year 1838, throughout the Province, one hundred and seventy-three Courts of Requests, and one thousand and sixty-eight Commissioners.

Within the same year the number of Summons issued was in round numbers forty thousand, and the number of Judgments given was twenty-five thousand.

The costs of these suits and proceedings your Committee had not time to ascertain by a reference to every Court of Requests in the Province. They however wrote for a Return of the costs for the six months ending the 30th June last, and from the replies given by the Clerk of one Court in nearly every District in the Province, they ascertained the average cost of a Judgment to be Eight Shillings and Three Pence Three Farthings.

The Expense of 25,000 Judgments at this rate will be ..... £10,338 10 10

The Expense of 15,000 Summons, allowing Sixpence for the Clerk, One Shilling for the Bailiff on serving, and Eight Pence milage, at an average of two miles on each, will be ..... 1,625 0 0

—making the total amount of ..... £11,963 10 10 as the Expenses of these Courts in the year 1838.

Appendix A.  
No. of Courts of  
Requests & Com-  
missioners in the  
Province in 1838.

Appendix B.  
No. of Summons  
issued and Judg-  
ments given in the  
year 1838.

Average cost of a  
Judgment, £s. 3*3*d.

Total of Judg-  
ments.

Expense of  
Summons, &c.

Manner of making  
out Returns.

From the manner in which the returns are made out, it is not quite clear that the aggregate of Costs is not given on the whole num-

ber of Summonses issued, in which case the average would be Five Shillings and Two Pence Halfpenny per Suit, and the expense of forty thousand Suits £10,416 13 4.

Object for establishing these Courts.

The great object of establishing these Courts was, in the opinion of your Committee, to combine a speedy remedy for the recovery of debts with cheapness; in other words, to afford a quick method of collecting, a satisfactory and impartial Court, and a rate of expense as low as was possible under all circumstances.

No objections have been made, so far as your Committee are aware, against the time within which debts *may* be collected within these Courts, and although they think the system capable of some improvements, they believe that its working in this respect is far more satisfactory than in almost any other.

System capable of improvement.

Complaints against Commissioners.

Against the conduct of many individual Commissioners, against the legality of their proceedings as exceeding their jurisdiction, against the justice of their decisions in particular cases, and against the costs allowed and adjudged by them, many and great complaints have been made.

A considerable number of such complaints have from time to time been preferred to the Executive Government, in some instances charging the Commissioners with corruption and partiality, in others with ignorance and incapacity—in some cases the conduct or *decisions* of the Commissioners have been

brought in question before the supreme tribunals, in others the Executive Government have made the best investigation in their power into the circumstances—a proceeding, however, which is found alike inconvenient and unsatisfactory—but in the great majority of cases the parties who have felt themselves aggrieved, have gone no further than to express their dissatisfaction in general conversation, or sometimes in the public prints.

Your Committee see no reason to doubt that a large proportion of these complaints arise from the disappointment naturally experienced by the losing parties in contested claims. When both Plaintiff and Defendant think themselves right, let the decision be never so just and equitable, one or other of the parties will be discontented.

This feeling will, however, be doubtless greatly increased whenever there is a want of confidence either in the ability or integrity of the Commissioners, and your Committee believe that this cause occasionally operates in producing complaints against these Courts.

And your Committee cannot avoid the conclusion, that there may be found some instances in which dissatisfaction has been justly excited, by an abuse and improper exercise of the very large discretionary powers which the Statutes vest in the Commissioners. There is reason to apprehend that there have been cases in which Commissioners have acted as Agents for creditors, an office which is more usually discharged by the Clerks of the Courts.

Sources of complaints.

The most common sources of complaint have been, that the Commissioners have entertained suits not legally within their jurisdiction—that they do not command that degree of respect which would enable them to preserve necessary order and decorum in their proceedings, and that it happens consequently, the solemnity of an oath is not sufficiently regarded by parties or witnesses in a suit, because, not respecting the tribunal, they treat with a greater or less degree of levity every proceeding — by it.

Nor does the conclusion afford any just grounds for surprise, or imply a want of care or caution on the part of the Executive Government in the selection of Commissioners; the fault rather is in the system itself, which requires so large a number to carry it into execution. Many of them must unavoidably be selected in remote and thinly-settled portions of the country, where it is always difficult, and frequently impossible, to find a sufficient number of individuals possessing the requisite qualifications; and your Committee are aware that great difficulty and embarrassment have been experienced in filling up the appointments from time to time required.

In estimating the expense of attending these Courts, your Committee think it also right to advert to the time spent by litigants contesting claims; and the very frequency of the Courts increases the loss of time, as a system of adjourning from Court to Court

prevails in many places, and inevitably adds to the expense of witnesses, as well as to the loss of time of the parties.

Your Committee, however, cannot leave this part of the subject without stating their conviction that, in a great many cases, the Courts are most respectably constituted, and their mode of conducting business gives satisfaction to the suitors over the trial of whose causes they preside.

Having thus endeavoured to explain the present system in its effects and mode of working, your Committee have only to state that, in their opinion, the law regulating these Courts might be altered, so as to render them more useful and efficient, and, at the same time, reduce the expense attending the administration of Justice in these and the District Courts.

This conclusion has rendered it unnecessary for the Committee to report upon the second branch of enquiry entrusted to them, namely, whether some mode of investigating the conduct of Commissioners, upon complaints being made against them by the public, might not be rendered effective.

The third and fourth enquiries will be best answered by an explanation of the system which the Committee propose should be established for the collection of small debts:

They recommend the abolition of the Courts of Requests; that, after a day to be fixed, no Summons shall be issued from any

The Law regulating these Courts might be altered.

2nd Branch of enquiry.

3rd and 4th branches.

Abolition of Courts of Requests recommended.

of those Courts; and that after some subsequent day, to be also fixed, no Judgment or other proceeding shall take place.

Executions which on such subsequent day are in the Bailiff's hands may be acted on till satisfied. Executions may be issued from the new Courts on Judgments rendered in the old.

Divisions recommended.

They further recommend that every District in the Province should be divided into Six Divisions, in each of which a Court for the recovery of Debts to the amount of £10 should be holden once in every two months.

A Barrister may preside as Judge in certain cases.

That the Judge of the District Court (or in his absence, from sickness or other inevitable necessity, a Barrister, of not less than three years standing, to be appointed as occasion requires by such Judge) shall hold such Courts, exercising similar powers and authority with those now possessed by the Commissioners of the Courts of Requests, with power also to the Judge, under certain restrictions as to time, to order payment of a Debt by instalments, and with an appeal, in all cases over Five Pounds, to a Jury at the regular sittings of the District Court next after the Judgment appealed against shall have been rendered.

It may be objected to this plan that the Courts will not be held often enough, and their infrequency will occasion an inconvenient delay in the collection of Debts. Except as regards suits for sums under forty

shillings, this objection is more apparent than real, for under the present law in all cases where judgment is given for a larger sum than forty shillings, no execution can issue under forty days, unless it is shewn that the debt is thereby endangered, and the discretionary power which it is proposed to give the Judge to order payment by instalments, being restricted by the length of notice which the Defendant has had from the service of the Summons, will do away with the necessity of staying Execution for forty days, and thus enable a Plaintiff to recover his debt nearly as soon as under the present system.

In support of the proposed change may be urged the strong probability of uniform principles of decision, not only in each District, but throughout the Province; that the jurisdiction of these Courts will be confined within the limits intended by the Legislature—which limits are at present very often overstepped by the Commissioners from a want of clearly understanding technical distinctions, and the observance of well established rules of evidence and law, as regards the responsibility of parties, a competent knowledge of which may be reasonably assumed to exist in the different Judges of the District Courts. But another and important benefit which your Committee anticipate from this change, is the placing the administration of justice, both in the Courts of Requests and the District Courts, on a more respectable and independent footing, as regards the payment of the

Benefits of the proposed change.

Judges.—At present the remuneration of Judges and Commissioners depends on the amount of business transacted by them respectively, and without pausing to enquire what may have been the effects, the tendency of such a system to encourage litigation is sufficiently obvious, and indeed one ground of accusation against Commissioners, which has been urged is, that they are inclined to favour those parties who bring the greater number of suits before them for adjudication. To substitute a fixed salary for the services required from the Judges in both Courts would accomplish the objects alluded to, and would, in the opinion of the Committee, instead of increasing, diminish the expense at present borne by the community.

In order to establish that opinion, the Committee will assume the full amount of expense which would accrue for several years if all the eighteen Districts erected, or the erection of which is sanctioned by law, were at once created.

Salaries proposed. Your Committee propose a scale of salaries graduated according to population. In Districts wherein the population exceeds 30,000, they would recommend the Judge's salary to be £350 per annum; where the population is under 30,000, but exceeds 20,000—£300 per annum, and where the population is under 20,000—£250 per annum.

Looking at the last population returns, and bearing in mind the effect which the erec-

tion of new Districts will have in reducing the population of the old, the effect may be calculated as follows:—

Six Districts at £350 per annum .....	£2100
Six Districts at £300 per annum .....	1800
Six Districts at £250 per annum .....	1500
	£5400

And if all the Districts reached the maximum of salary by increase of population, the total expense would be £6000 per annum, with a population of 540,000, allowing each District to be equally peopled, but in all probability before the more thinly peopled Districts shall have reached the number proposed, as conferring the maximum of salary, those at present having such a population will have increased in a similar degree, and the population of the Province will, when the full amount of £6000 shall be required, exceed 650,000.

Expenses per annum, 6000*l.*

Taking the return of 1838 as affording a reasonable average for the future, and requiring a fee of 6d. on every Summons, and of 1s. 6d. on every Judgment, to be collected and paid over to the Receiver General, a fund of £2875 will be created towards the payment of these salaries, and by collecting a moderate fee on each Writ of Capias, Summons, or Execution, and on each Judgment in the District Courts, the requisite balance would be readily provided to meet the payment of these salaries. The fees now authorized would at once be diminished, and an increase of business and of popu-

Fees of the Clerks  
and Bailiffs.

lation would, in lieu of increasing the general expenses of these Courts, render practicable a further diminution. A different regulation of the fees to the Clerks and Bailiffs of the Courts of Requests, particularly as respects the milage of the latter, would afford an opportunity of further reduction, as from the increased size of these divisions their remuneration would be greater than at present, even at a reduced scale of fees.

In order to fix the amount of charge on the different enumerated items in the District Courts, it would be necessary to procure returns of the number of Summons, Writs of Capias, Judgments, and Executions within a given period, say the year 1838, and the proper scale might then be readily established.

The Judge of a  
District to be a  
Barrister.

In connection with this alteration, and in order to ensure its success, the Committee would earnestly advise that no person should hold the situation of Judge of a District Court who is not a Barrister of at least three years standing, and that he be resident in the District for which he is Judge. They are also of opinion that a revision of the system of practice at present in force in the District Courts might be advantageously made at the same time with the proposed changes in the Courts of Requests.

Should His Excellency be pleased to approve of these suggestions, Bills to carry

them into effect could be prepared in order to be submitted to the Legislature.

All which is respectfully submitted.

(Signed)      CHR. A. HAGEMAN,

(Signed)      WM. H. DRAPER.

DECEMBER 11th, 1839.



# THIRD REPORT OF GENERAL BOARD.

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*Unto the Right Honourable CHARLES POULETT THOMSON, Governor General and Captain General of British North America, &c. &c. &c.*

THE Commissioners, appointed to investigate into the business, conduct, and organization of the various Public Departments of the Province of Upper Canada, beg leave respectfully to Report:

That the Committee of their number, to whom was intrusted the Investigation of the “Office of Inspector General,” having enquired into that department, have made the Report hereunto appended, which having submitted to the General Board of Commissioners, has been examined, approved of, and adopted by them; and is now respectfully submitted to your Excellency as their *Third Report.*

Third Report of  
General Board.

Signed in name and by authority of the Board.

R. B. SULLIVAN,  
*President.*

INVESTIGATION COMMISSION,  
Toronto, 14th January, 1840.



## APPENDIX TO THIRD REPORT.

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### REPORT.

THE Committee assigned to enquire into the duties of the Inspector General of Public Accounts, and the system pursued in his office, beg leave to report as follows:—

Previous to entering on the result of the investigations of the Committee, it would refer to the instructions of His Excellency the Lieutenant Governor, communicated to it as the ground-work of its contemplated inquiries:

“To this Committee is assigned the inquiry into the duties of the Inspector General of Public Accounts, and the system pursued in his office.

To inquire into  
the duties of  
Inspector General.

“The Committee will ascertain—*First*, The particular nature and extent of the business which is, and for some time past has been, transacted in this Department.

“*Second*—Whether the business be such as should properly devolve on this office, or whether any portion of it might be beneficially transferred to other Departments, or on the other hand whether any additional duties might be advantageously assigned to this office.

Whether any part  
of the business  
might be trans-  
ferred.

“*Third*—Whether the system of accounts pursued in this office be satisfactory, or whether it be capable of improvement in any respect.

“*Fourth*—Whether the different Public Accountants transmit their returns to this office punctually at regular stated

General queries as to the powers and abilities of the Inspector General for the right conduct of the affairs pertaining to his office, and whether proper Returns are made to him to enable him rightly to fulfil the duties of the same.

periods, or if not, whether a sufficient power at present exists for compelling prompt and regular transmission of accounts.

“ *Fifth*—Whether the information necessary for a strict scrutiny into all money transactions be promptly afforded by Public Accounts, and whether any improvement in the present form of rendering accounts to the Inspector General, or in preparing the Public Accounts of the Province, be requisite.

“ *Sixth*—Whether the Inspector General has sufficient means of ascertaining that the several Collectors and Receivers of Public Revenues faithfully and truly account for all moneys for which they are responsible.

“ *Seventh*—Whether there be means of knowing that due diligence is observed by the respective officers in the collection of duties on Imports, and on Shop, Tavern, Still, and other Licenses, as also in punishing such persons as may be detected in attempts at fraudulent evasions of the Revenue Laws.

“ *Eighth*—Whether returns be duly made of fines levied by the warrants of Magistrates, and paid to the Receiver General for the public uses of the Province, by virtue of any law now in force.

“ *Ninth*—Whether the returns be made to the office of fines levied under the authority of Statutes enjoining their appropriation to local purposes, or if not, whether there be any means by which the Executive Government may learn periodically the amount of fines so levied, and ascertain and check the manner of their application to the ends prescribed by Statute.

“ *Tenth*—Whether the accounts of moneys expended by Commissioners appointed under acts of the Legislature, be duly examined at this office.

“ *Eleventh*—Whether the rents of Ferries and Mill Seats, which should be regularly paid to the Receiver General, be returned in any form of account to the Inspector General.

“ *Twelfth*—Whether returns of fines, estreats, &c., be duly made to this office by Sheriffs, Clerks of the Peace, &c., or if not, whether there be any other means of checking

and controlling the receipts and payments of this class of Public Accountants.

“ *Thirteenth*—What means exist whereby payments made, from time to time, by receivers of public money may be verified, as the amount for which they ought severally to account.

“ *Fourteenth*—What balances remain due by Collectors, Inspectors, and all other Public Accountants, after the lapse of the period within which they should have been accounted for, according to existing laws and regulations.

“ *Fifteenth*—Whether under the sanction of Legislative enactment, and for the purpose of placing Public Accountants beyond the possible temptation of seeking private advantage from the use of public moneys, temporarily accumulating in their hands, it might or might not be expedient to conclude an arrangement with one of the Chartered Banks, by which that institution would become the sole depository of public moneys and the medium of payment of all public debts.

“ *Sixteenth*—Whether it be practicable to simplify the Public Accounts by reducing the number of distinct funds, among which, as now classified, the receipts and payments on account of revenue and expenditure are distributed.

To simplify the  
Public Accounts  
by reducing the  
number of distinct  
funds.

Mode of issuing  
Warrants.

“ *Seventeenth*—Whether the method hitherto pursued of issuing a separate warrant for each payment, might or might not, on account of the public service, be advantageously modified, so far as relates to fixed and regular heads of expenditure ;—A single warrant for instance, being issued to the chief officer of a department, for the aggregate amount of all sums required at a particular period, and payable to the individuals of that department.

Examination of  
Public Receipts  
and Disbursements

“ *Eighteenth*—Whether the office of Inspector General, as at present organized and constituted, be adequate, or more than adequate, to the effectual examination and control of all the accounts and returns of public receipts and disbursements rendered to this department.

Salaries.

“ *Nineteenth*—Whether the salaries allowed in this department are sufficient, or more than sufficient, as a com-

pensation for the duties performed—and whether there be any necessity for an increase or a reduction of the assistance at present afforded.

Receipts, &c.  
brought under the  
review of this De-  
partment.

*"Twentieth*—Whether every item of receipt and expenditure, in which the public have any interest, be regularly and duly brought under the review of this department—if not, the Committee will state the particulars of any failure or omission, with their suggestions thereupon.

Commissioners to  
investigate all mat-  
ters of public in-  
terest connected  
with the several  
Departments.

"As the object of the appointment of this Commission is to investigate generally all matters of public interest connected with the several departments—this Committee will understand, that they are not restricted to limit their inquiries by the strict letter of the foregoing queries, but that in the full spirit of the same, they are to pursue any course of investigation which may appear to them expedient."

When this Committee was first organized for the purpose of following out the line of investigation prescribed by the above instructions, it became an indispensable object to understand, from a careful analysis of their contents, the precise nature, extent, and limits of the inquiries necessary to be prosecuted, to enable it to answer the design of the Executive, by reporting with effect and exactitude on the important department subjected to its contemplated investigations.

After a mature consideration of the scope and bearing of those instructions, and for the purpose of condensing its inquiries into fixed and ascertained limits, the Committee has resolved, under three distinct heads or divisions, to embrace the various objects to which its attention has been directed.

*First Division*.—It is proposed in the First Division to comprise the several con-

templated inquiries of the 1st, 2nd, 3rd, 16th, 17th, 18th, 19th and 20th heads of the above Instructions, by prosecuting an investigation into the Department of the Inspector General of Public Accounts, and the system pursued in his office; ascertaining the nature and extent of the business therein transacted; the method of checking and controlling the Public Receipts and Expenditure; the efficiency or inefficiency of that Department as at present organized; and generally whether the system, by which the same is now regulated, be susceptible of any improvement.

First Division,  
comprises 1, 2, 3,  
16, 17, 18, 19, and  
20th heads of in-  
vestigation, relat-  
ing to Inspector  
General of Public  
Accounts.

**Second Division.**—Under the Second Division it is proposed to follow up the inquiry suggested by the Seventh head of Instructions, by instituting an inquiry into the present system of collecting the Duties on Imports, and on Shop, Tavern, Still, and other Licenses; and, considering the sufficiency or inadequateness of the Revenue Laws by which those duties are intended to be enforced and violation or evasion of their provisions punished.

Second Division,  
on collecting duties  
on Imports and  
Licenses, also on  
the Revenue Laws.

**Third Division.**—Under the Third Division a general inquiry is proposed to be instituted, calculated to embrace the 4th, 5th, 6th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, and 15th heads of the Instructions, into the present system of transmitting Returns to the Inspector General by the various Public Accountants; the power of that Officer to enforce the prompt and regular transmission of such Returns from all Officers entrusted

Third Division,  
embracing the  
heads of instruc-  
tions from No. 4 to  
15 inclusive—  
present system of  
transmitting re-  
turns to Inspector  
General by various  
public accountants.

with the receipt or collection of public moneys, Inspectors, Collectors, Sheriffs, Magistrates, or other functionaries; the means that exist of checking the expenditure of public moneys entrusted to Parliamentary Commissioners. To ascertain the balances due by Public Accountants for which they are in arrear; whether a Chartered Bank might not advantageously be made the Depository of all public moneys, and the medium of payment of all public debts, and generally to suggest any improvement of which the present system is capable.

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#### FIRST DIVISION.

#### OFFICE OF THE INSPECTOR GENERAL.

In entering on the discussions incidental to a consideration of the 1st Division of the intended investigation, the Committee has first sought the information necessary for a right understanding of the system under which the office of the Inspector General is conducted.

As the natural means of elucidating the nature and organization of that important Department, the Committee has caused a series of interrogatories, grounded principally on the Instructions from the Executive, to be administered to the head of the Department, and also to his Senior Assistant.

In deciding on the line of inquiry to be adopted in framing these interrogatories, due consideration was had to the nature of the office, of the internal condition of which information was required.

It was recollected that the Inspector General of Public Accounts, with one small and somewhat anomalous exception to be hereafter noticed, could not himself be considered a Public Accountant.—His office was not the medium through which moneys were received or disbursed on account of the public service. It was his duty to check and control the accounts and returns of others to whom such moneys were entrusted, and to see that punctuality and correctness were duly observed by them, but personally that officer was unconnected with the responsibility or custody of public moneys.

Inspector General  
not considered a  
Public Accountant  
(with one exception )

It was on the system under which he had to control the accounts of others, and the sufficiency of that system to answer the ends for which it was designed, in ensuring method and punctuality in the management of the Public Accounts, and detecting error or defalcation where such occurred, that the Committee was desirous to be fully informed, and, to obtain such information, decided on the course of inquiry to which allusion has been made.

To these interrogatories a series of answers, drawn up with great apparent candour and attention, has been received from the Inspec-

tor General. From the senior Clerk in that Department, answers have also been received.

As the best means of developing the various duties of that important office, the Committee would refer to the following lucid epitome of the same, extracted from the answers of that officer.

#### DUTIES OF INSPECTOR GENERAL.

“It is his duty,—

Duties of Inspector General.

“1st. To see that all accounts or claims against the Government are fully supported by vouchers and authorities, and that all public moneys issued are duly applied to the purpose for which they were intended, and regularly and truly accounted for.

“2nd. To see that the Revenues of every kind are regularly and in due form brought to account, and to call upon the officers respectively concerned for all necessary documents and explanations.

“3rd. To be careful that no deductions or diminutions in the receipt of the Revenue, and no expenses take place which are not established by law, or by the authority of the Lords Commissioners of the Treasury, or by order of the Lieutenant Governor.

“4th. To examine, enter, and countersign all warrants for the issue or expenditure of public money, previously to their receiving the Lieutenant Governor’s signature.

“5th. To report upon the Petitions of persons applying for privilege in respect of grants of lands as U. E. Loyalists, or their children, or as Military claimants, or as settlers under certain restrictions, from the Secretary of State.

“6th. To prepare and report statements of the Receipts and Expenditure of the Public Revenue, and submit estimates relative to the public service when required, for the use or information of the Executive Government or the Legislature.

“7th. To provide for the maintenance of the Light Houses, and to pay their keepers.

“8th. To report, as occasion may require, upon all matters relating to the Revenue, which may be brought under the notice of the Lieutenant Governor, by appeal against the Revenue Officers, or in any other manner.

“The superintendance of the collection of duties of customs, and the duties on licenses of various descriptions, devolves on this office, and is embraced in the foregoing statement.”

From the above abstract a correct idea may be formed of “the nature and extent of the business, which is, and for some time past has been, transacted in this Department.”

It will be seen of what vital importance to the proper working of the whole machinery by which the public business is transacted, must always be the regularity or derangement of this superintending Department.

Department of  
vital importance.

Any laxity or carelessness permitted to interfere with its checking and controlling functions, must sooner or later most seriously affect the interest of the public, while, on the other hand, a vigilant and rigid superintendence must ensure method and regularity in the various branches subject to the scrutiny of this office, and error, negligence, or defalcation, be rapidly-discovered and corrected.

It will appear from the information before the Committee, that, with the exceptions above being noticed, the business now transacted in that Department is of the nature that should cause it properly to devolve thereon, and that

no portion of it could with advantage to the public service be transferred to any other.

With respect to the assigning new duties to this office, the following parts of this Report may be found to suggest alterations on the existing system, which, if adopted, may cause certain additional duties to devolve on the Inspector General.

### U. E. LOYALISTS.

#### U. E. Loyalists.

Land business  
forms part of du-  
ties of that office.

By a reference to the foregoing abstract of the duties of that office, it will be found under the 5th head, that "To report upon the Petitions of persons applying for privilege in respect of grants of land as U. E. Loyalists or their children," forms a part of the ordinary duties.

From an attentive consideration of the present state of the claims of the U. E. Loyalists—the time that has elapsed since the issuing of the Royal Proclamation, promising lands to that meritorious class of subjects—the exceeding difficulty under the present system of equitably dealing with the descendants of the original settlers—the Committee is induced to recommend the adoption of some plan calculated to bring to a close all granting or transferring of land to any claimants of the Royal Bounty to U. E. Loyalists.

Granting Lands to  
U. E.s to be  
brought to a close.

At the time when the first regulations were promulgated, a reasonable and generally certain method was observed in identifying any

applicant. From the personal knowledge of the Justices of the Peace in each District was sought a certificate that the individual presenting himself was indeed entitled to a share in the bounty of the Crown. For many years sufficient certainty was thus ensured. But as, in the natural course of things, the old Magistrates, familiar with all the early Settlers in this thinly-peopled District, ceased gradually to exist, and it became necessary that their successors of another generation should equally certify as to the identity of the descendants of the first Loyalists, the inadequacy of the system became apparent.

The increasing population, and number of persons in each District of names similar to those in the U. E. lists have, it is to be feared, opened a door to much attempted deception.

Increase of population caused deception.

The Inspector General, in a Report on those claims lately made to the Lieutenant Governor, has clearly pointed out the difficulties that pervade the present system.

The constant recurrence of similar names in the lists is often perplexing and deceptive, and, before existing tribunals, mistakes, as to the weight and admissibility of evidence adduced to support a disputed pedigree, may sometimes be presumed to occur.

From the time that has elapsed since the date of the Proclamation, and from the reflection that almost all the children of the old Loyalists must have attained to years of dis-

Plan suggested by  
Inspector General  
for closing U. E.  
Loyalists' Acc'ts.

cretion, the Committee is induced to submit for consideration a plan suggested by the Inspector General for finally closing the U. E. Loyalists' Accounts, in a manner equally creditable to the original generosity of the Crown, and just to that meritorious class of subjects and their surviving descendants.

District Boards to be established.

By this plan it is proposed to establish in each District a local temporary Board, composed of individuals named by the Executive, and possessing knowledge and experience adequate to the task of hearing and justly determining adverse claims.

Each to sit three times.

Each Board shall be directed to sit and adjourn three times, giving ample notice through every public channel of the appointed time when claims for privilege, in respect of U. E. Loyalists or their children, should be heard.

After last meeting U. E. Lists to be finally closed.

After the last public meeting of the Board the U. E. lists should be finally closed, and all unproduced claims for ever barred. The Judge of the District Court, or other functionary acquainted with the ordinary laws of evidence, might form one of the Board in anticipation of the occurrence of questions demanding some legal knowledge.

A similar conclusion could be arrived at in a much less complicated or expensive, though perhaps not equally popular way, by directing the publication of Notices over the Province that, after a certain reasonable period to be decided on, no application for a U. E.

Notices to be published.

claim would be entertained by the Executive Council; and thus, by a slight alteration, might be brought to a close these long protracted and perplexing claims.

### LIGHT HOUSES.

In a preceding part of this Report, an exception was noticed to the rule that the Inspector General could not be considered a Public Accountant.

Superintending the various Light Houses, contracting for their necessary supplies and paying the Salaries of their Keepers, forms the exception; and the Committee, while recognizing the propriety of continuing that Officer in his present duty of inspecting those places, is inclined to recommend such a change in the existing system as would transfer to another Department the payment of the moneys necessary for the due maintenance of those indispensable protections to navigation.

In what the Inspector General is considered a public accountant.

The Inspector General could give the ordinary certificates of the sums required, and the Receiver General be properly deputed to disburse the necessary amount from the Public Funds. It is thus proposed to relieve the Inspector General from the only duty, by the performance of which he can be regarded as a Public Accountant.

## INSPECTION OF LIGHT HOUSES.

Light Houses  
should be periodically inspected.

It has been recommended to the Committee, and appears to be desirable, that the various Light Houses should be periodically visited and inspected by some competent person to be deputed for that service.

System of  
Accounts.

From the information obtained by the Committee, it is enabled to submit the following statement of the manner in which the Accounts of the Inspector General's Department are distributively arranged, referring to the answers of that Officer appended hereto for further information on the subject.

## LIST OF OFFICE BOOKS.

1st.—*Warrant Books.*

- A. Duties 14 Geo. 3d, chapter 88—transferred after passage of 1 Wm. 4, chapter 14, to Provincial Fund, and Book therefore closed.
- B. Provincial Fund.
- D. Canada Company Payments.
- E. Clergy Reserve Rents.
- F. Certain Crown Land Sales.
- G. Sums voted for Civil Lists, closed.
- H. Provincial and Crown Fund—Civil List, closed.
- I. Produce of Sale of School Reserves.
- K. King's Rights.
- L. Law Society Fees.

2nd.—*Confiscated Estates.—(Closed.)*3rd.—*Law Books.*

Book containing the U. E. List—Minutes of Examinations on Land Patents—Reports of Commissioners under Heir and Devisee Acts.

4th.—*Correspondence.*

Authorities Book, in which are entered the Orders or Instructions sanctioning Disbursements and regulating the Inspection of Accounts and Claims.

Opinions Book, in which are recorded the opinions of the Law Officers of the Crown upon questions touching the just construction of the Laws relating to the Revenue and the Duties of the Department.

Letter Book, *official*. Letter Book, *demi-official*.

Report Book, recently introduced.

5th.—*Accounts.*

Book for entering of all Public Accounts.

Book for entry of remarks on Public Accounts preparatory to Audit.

Book for entry of Crown Lands and Timber Account.

Book for entry of Clergy Reserves Sales—Accounts.

Book containing the Returns and Accounts-current of Collectors of Customs.

Books containing the Returns of Inspectors.

Books containing the Accounts Current of Inspectors.

Book containing various Accounts Current.

Book containing Accounts of Proceeds of Sales of Articles Seized and Condemned.

Book containing the Returns of Duties on Imports collected in Lower Canada.

Book containing the distribution of Money paid to the Receiver General and periodically carried to the credit of the several Public Accounts or Funds.

In addition to these books, among which the accounts of the office are now distributed, a book has been commenced “in which separate accounts are to be opened for each advance of public money by Act of Parliament, as appropriations or loans which are to be refunded to the Public Treasury with interest.”

## BOOKS FOR PUBLIC DEBT.

It is proposed by the Head of the Department, and the proposition meets with the decided approbation of the Committee, to open a set of books for the various Debentures now composing the Public Debt, and in which every thing relating thereto should be regularly entered, so that at any time the fullest information of the actual state of the Public Finances, the amount of outstanding Debentures, the interest thereon, and the periods of their respective contemplated redemption, could readily be afforded from that office.

The Rec'r Gen'l  
regarded as the  
superintendent  
and manager of  
the Public Debt.

The Receiver General has always been regarded as the superintendent and manager of the Public Debt; but there is every reason to anticipate improvement, or at least additional perspicuity in the working of the machinery of the same, were this Department enabled, by keeping an account of every thing connected with that debt, to form a check on any possible derangement in the regulation of the same arising in the Department, to whose management it is now solely entrusted.

The above propo-  
sition would form  
a check.

Further assistance  
in the office may  
be necessary.

To carry into effect this contemplated improvement, and also to ensure the performance of certain additional duties which may devolve on this Department in the event of the adoption of alterations hereinafter to be suggested by the Committee, it is not improbable but that further assistance than is afforded by the present establishment of the office may be found necessary.

## SIMPLIFICATION OF THE PUBLIC ACCOUNTS.

Under the sixteenth head of instructions, <sup>16th Head.</sup> the Committee is directed to inquire, "whether it be practicable to simplify the Public Accounts by reducing the number of distinct funds, among which, as now classified, the receipts and payments on account of Revenue and Expenditure are distributed?"

In pronouncing an absolute opinion on the practicability of any proposed alteration or amalgamation of the several distinct funds, it would perhaps have been necessary for the members of the Committee to have personally experienced the effect of the present system of distribution.

The question is one purely practical and equally ill-adapted for the censure of theoretical objection, or the suggestions of speculative improvement—actual experience alone can test the sufficiency of the system and originate and mature judicious alteration.

Experience alone  
can test the  
system.

It is recommended by the Head of the Department, and also by the senior Clerk therein, that a condensation of the several funds should take place.

The Funds should  
be condensed.

In a preceding part of this Report, a statement of the several distinct Funds is given. It is suggested that when the proposed surrender of the Crown Funds to the disposal of the Provincial Legislature shall have taken place, that the accounts now separately known as Funds K. D. F. and B., may with

Various Accounts  
to be as one General Account.

advantage to the Public Service be consolidated into one Account, to be denominated "The General or Provincial Fund."

The Fund marked D, composing the Canada Company payments, and now kept separate by order of the Imperial Government, must soon become extinct, as the engagements of the company shall be fulfilled.

Alterations in  
arrangement of  
distinct funds.

Fund F, created by the sale of certain Crown Lands, is now capable of being merged in Fund K. It is also suggested that Fund L need not be continued in the hands of the Receiver General, as being made up of Fees and belonging to the Law Society; it might now with propriety be kept by the Treasurer of that corporation.

In the event of those alterations being effected, it appears from the information before the Committee that there would remain the following Funds: A, the General, or Provincial Fund; B, the Clergy Rents Fund; C, the Grammar School Fund. There might also be occasionally some special Fund to comprise Accounts temporarily kept for any particular purpose of periodical occurrence.

In the Answer received from the Senior Clerk in that Department, that gentleman divides the number of distinct Funds into which the present divisions may be condensed into four, thus:

The Provincial Revenue,  
The Casual and Territorial,

'The School,  
The Clergy.

It is presumed, however, that the first statement is predicated on the cession of the Casual and Territorial Revenues to the Provincial Legislature.

The proposed simplification certainly bears on its front every appearance of practicability and probable utility. If, on being put to the test, it be found to equal in practice its theoretic advantages, much perspicuity and improvement in the present system of keeping the Public Accounts may be fairly anticipated.

Improvement in  
the present system  
anticipated.

ISSUING OF WARRANTS.

After making the necessary inquiries to elucidate the workings of the system under which Warrants are now issued, the Committee cannot hesitate to assert its opinion, that many objections may be reasonably taken to the same, on the several grounds of unnecessary labour, intricacy, and delay. Under the present system it appears that semi-annually a separate warrant in duplicate is required for the payment of every individual having a claim against the Government for services done in any department or capacity. The body of this warrant must be transcribed no less than thirteen times in the different offices.

Present system of  
issuing Warrants  
objectionable.

A reference to the printed statement of Public Accounts furnished to the Legislature will give an idea of the amount of labour

Labour bestowed  
under the present  
system.

that must be bestowed under the present system on the issuing of warrants, when the number of persons there appearing to be paid is taken into consideration, and the formula and work actually required for each case.

The plan of the Inspector General desirable.

A plan has been submitted by the Inspector General which, if adopted, there is every reason to believe, would be found to be exempt from the inconvenience, complicated labours, and delay with which the present system may fairly be charged.

Pay Lists to be rendered in duplicate.

See Appendix.

It is proposed that at the end of each period at which payments are to be made, the head of each Department should transmit to the Inspector General a Departmental Pay List in quadruplicate, according to the form laid down in a paper marked X, appended to this Report. In this list would be specified the several amounts due to individuals in the office. It would be signed by the head of the Department, who would hand it to the Inspector General.

See Appendix.

A general Abstract (according to the form of the paper marked Y, appended to this Report) would then be compiled from the Departmental Returns in duplicate, and be transmitted by the Inspector General to the Provincial Secretary. In this would be set forth the individuals to whom portions of Salaries might be due, departmentally divided, and opposite to each name in that abstract would be the signature of the indi-

vidual acknowledging the receipt of the sum opposite his name, as in full of the amount due him on account of his Salary in his particular office. A general warrant (according to the form of the paper marked **Z**, appended to this Report) is then proposed to be sent from the Executive Government to the Receiver General, by which that functionary is directed and authorized to pay to the several persons named in the accompanying abstract, to which reference has already been made, the several sums set opposite their names, in full of their Salaries for the periods therein mentioned, on their signing their names to the same. According to this system one warrant would answer the purposes of thirty now required.

It is also submitted that a similar course could be pursued with respect to the contingencies of each Department, and also that perhaps a more advisable plan would be to make up warrants prepared from the separate returns of each Department.

The Inspector General considers his plan open to the objection, that "it would render each Head of a Department an Accounting Officer quoad the payment of his Clerks, which by the other method is avoided."

The Committee is, however, of opinion that this objection could at once be obviated by so far modifying the proposed arrangement, by providing that the Head of the Department should receive only his own salary, and each

Payment of Salaries.

Contingencies.

Objection to the proposed plan.

Objection obviated

of his subordinates, on signing the Pay List in the Receiver General's Office, could obtain his own proportion.

#### ADEQUACY OF DEPARTMENT.

The Committee has already alluded to the probability of additional assistance being required in the office of the Inspector General, in the event of the adoption of alterations herein recommended.

The improvements suggested by the Head of the Department to carry out what extra sets of books might be required, would perhaps render such assistance indispensable.

As at present organized, without any of those contemplated additions to its duties, the Department may be considered adequate "to the effectual examination and control of all the accounts and returns of public receipts and disbursements rendered thereto."

#### SALARIES.

The salaries in this Department seem to be according to the same scale that regulates the other offices, and the Committee is not prepared to offer any remarks on the propriety of effecting any alteration in their amount.

The Committee is of opinion that so far as the present state of Legislative enactments will permit, that "every item of receipt and expenditure, in which the public have any interest, is regularly and duly brought under the review of this Department."

In the subsequent parts of this Report, the Committee will venture to suggest certain alterations, which, if thought worthy of adoption, will, it is hoped, have the effect of rendering the Department of the Inspector General more adequate to its original design of being the means of effectually checking and controlling the Public Accounts of the Province—detecting error, neglect, or default, if any exist, and insuring method and punctuality in the various offices subject to its superintendance.

Alterations suggested by the Committee.

## SECOND DIVISION.

### THE REVENUE.

By the 7th head of its instructions the Committee is directed to inquire “whether there be means of knowing that due diligence is observed by the respective officers in the collection of the duties on Imports, and on Shop, Tavern, Still, and other Licenses, as also in punishing such persons as may be detected in attempts at fraudulent evasions of the Revenue Laws.”

Instructions to Committee.

Import duties and licenses on shop, stills, &c.

In prosecuting the inquiries necessary for an exposition of the present system of collecting the Revenue, and of punishing infractions of its regulations, so far as is required by this head of its instructions, the Committee is aware of the great extent and importance of the subject submitted for its investigation.

A much more protracted inquiry, and a wider range of examination and reflection than present circumstances will admit, would perhaps be desirable, were a full review of the whole Revenue Laws of the Province, and an analysis of their apparent merits or imperfection, with appropriate suggestions of alteration and improvement, required at the hands of the Committee.

In adhering, however, to the spirit of its instructions, the Committee has prosecuted its inquiries as far as possible, considerably beyond the letter of its directions, but not further than a correct understanding of the subject would demand.

*Duties on imports,  
and shop and other  
licences.*

In inquiring into “the duties on Imports and on Shop, Tavern, Still, and other Licenses,” it will be found convenient to divide the subject into two parts,—one relating to the collection of duties on Imports,—the other comprising that branch of the Revenue exclusively Provincial, under which Shop, Tavern, Still, and other Licenses are regulated.

#### COLLECTORS OF CUSTOMS.

In commenting on the first part of the subject, it will be necessary to advert to that class of accountants intrusted with the enforcing of the duties on Imports.

*Ports of Entry.*

In this Province there are now thirty-six Ports of Entry and Clearance, over each of which a Collector of Customs is appointed by the Executive Government. The duties of

these officers are prescribed by acts of the Imperial Parliament, and also in part by Provincial enactments.

The Imperial act 3 and 4, Wm. 4th, chap. 59, regulates the amount of imposts charged on goods imported, and makes sundry general regulations for the collection of these rates. The Provincial act 4, Geo. 4th, chap. 11, imposes certain regulations, and points out the nature of the Collector's remuneration and when and how his returns are to be made. Each Collector is bound to make returns to the office of the Inspector General within forty days from the expiration of each quarter,—31st March, 30th June, 30th September, and 31st December, in each year.—Within the same period he is bound to remit to the Receiver General the amount of Revenue by him collected, otherwise he forfeits his allowance.

Duties of Collectors.

*Allowance to Collectors.*

He is allowed 50 per cent. on sums collected until his stipend amounts to £100; but in the event of collections exceeding £1000, he is allowed  $12\frac{1}{2}$  per cent. on £1000 and 5 per cent. on all sums above that, till his compensation shall reach £300 per annum.

Collectors remunerated.

HAWKERS AND PEDLARS.

By Statute 56, Geo. 3rd, chap. 34, Licenses to Hawkers, Pedlars, and Petty Chapmen are directed to be issued by the Collectors.

Collectors empowered to issue certain Licenses.

## AUCTIONEERS.

By Statute 58, Geo. 3rd, chap. 6, Licenses to Auctioneers are also issuable by these officers.

## PROHIBITION OF CERTAIN ARTICLES.

Importation of certain articles into this Province prohibited by the authority of the Imperial Parliament.

By the authority of the Imperial Legislature, certain articles were declared contraband and prohibited from being imported into these Provinces. To give effect to this provision of the Parliament, a great change in the system of collecting the Customs of this Province would be imperatively required. With a frontier of many hundred miles in extent, accessible in nearly all parts by water, and in many places only separated by a river or conventional line from a foreign nation, a Collector of Customs in each Port would find great difficulty in the way of enforcing the present Revenue Laws.

A Frontier Establishment necessary

A numerous and well-appointed establishment, under the superintendence of active and intelligent Officers, and adequate to the duty of constantly guarding the Provincial frontier, from the St. Lawrence to Lake Huron, could alone ensure a tolerably rigid observance of the ordinances of the Imperial and Colonial Parliaments.

When articles of ordinary and necessary consumption, which can be held at a low rate in one country, are forbidden to be introduced into one closely bordering on it, where the same articles will bring a much higher price,

Inducements for smuggling.

strong and generally irresistible inducements are held out to the practice of smuggling ; a crime in all countries looked on as one of no very heinous moral guilt, however subversive it be to the well-being of society in diminishing the resources of the State, and bringing into contempt the authority of its Laws.

No preventive service, however formidable or vigilant, has ever been found adequate to the total prevention of illicit traffic. The committee would instance the South-eastern shore of England, which, from its propinquity to the Continent, will furnish a striking illustration of the truth of this position.

There, with probably the most efficient and numerous preventive service in the world, between Portsmouth and London Bridge, more infractions of the Revenue Laws are said to occur than in any other part of England ; and contests are perpetually going on between the Officers of the Crown and the daring and often successful violators of the Law.

No successive failures can deter these attempts ; one successful run is held to compensate for three abortive schemes, so great is the gain by eluding either total prohibitions or exorbitant duties.

The higher the duty imposed by law, of course the greater the temptation to elude its payment ; when the article is contraband the inducement is commonly heightened by

the general anticipation of the high price to be obtained by its successful introduction.

Now, to apply these general remarks to this Province. It is a fact, equally notorious and lamentable, that infractions of the Revenue Laws are of daily and hourly occurrence, and the loss to the Public Treasury proportionately great.

Revenue Laws evaded.

Smuggling of Tea.

The article of Tea, for instance, which is declared contraband by the Imperial Act, will furnish a ready illustration. It is a fact of which every observant mind are fully cognizant, that at least nine-tenths of the Tea consumed in the Province is brought in by illicit traffic from the United States. There it can be had at a low rate; here it will bring a highly remunerating price.

Its injurious effects.

The fair Trader purchases at Montreal the article imported through the legitimate channels; his neighbour supplies his store from the cargo of the successful smuggler at a much lower rate; sells at the same, or perhaps lower price than the honest tradesman, and thus obtains a decided advantage by eluding a law which defeats, by an over strictness, its own design, and an almost irresistible temptation is held out to the injured Merchant to join in a profitable though unlawful traffic, from which great gain and but trifling risk may be anticipated, and to which society seems to attach no moral turpitude.

Inequality of  
prices of Tea in  
the U. S. and in  
Canada.

So long as the relative prices of Tea in the United States and in Canada remain as they are, whether occasioned by the difference of expense in the carriage, or of the taxes imposed at the Sea-ports, so long will the present laws be evaded with impunity.

In the first place, our extended frontier would require for its adequate protection an enormous preventive establishment, on somewhat the same footing, and perhaps at a greater expense than that maintained in England, which this Province would never be willing, or, in fact, able to maintain; in the second place, additional checks should be placed on the venders of the articles, and further inquisitorial power be given to the Revenue Officers, to enable them even with an increased establishment to detect and punish transgressors.

Inapplicability of  
the Imperial Act.

Considering how completely the exceeding rigour of the Imperial Statute, in declaring this article, with others, contraband, has defeated its original intention, and that an immense loss to the resources of the country is occasioned by the delay in adopting a more judicious system—the Committee would strongly urge the propriety and expediency of placing before the British Legislature in its true light the positive results and experienced inapplicability of its former enactment.

It might be submitted that were a very moderate duty put upon the now prohibited ar-

A moderate duty  
might be put on  
articles prohibited.

ticles, not high enough to render its evasion worth encountering the risk and inconvenience of smuggling, a very large addition would be made to the Revenue of the Province from a quarter from whence nothing is now contributed, and where a moderate tax would be equally equitable and remunerative.

This would be the surest method of correcting what there can be no hesitation in designating as a crying abuse, and would at once strike at the root of the existing evil.

But in the event of no alteration being attainable in the Imperial Statute, it may be required of this Committee to devise some plan by which the dignity of the law, as it now stands, may be more effectually vindicated.

In attempting any amelioration of the present system by Provincial Legislation, the Committee cannot disguise from itself the exceeding difficulty of the task. Any fresh provision which it may recommend will, it is feared, involve as a necessary incident to its efficiency, an increase in the Custom's establishment, and it is then to be considered whether the increased expense would not neutralize any anticipated benefit.

Activity of Collector  
in seizing  
smuggled goods.

From the information laid before the Committee, it appears that in general the several Collectors are very active in the seizure of smuggled goods; but the local causes before noticed, must render even the most unwearied perseverance and industry almost unavailing, and every day brings a fresh instance of the

successful result of smuggling and the inefficiency of the baffled laws.

It would appear, however, that sufficient power is not given to the Collector of Customs of prosecuting the searches necessary to detect and seize goods suspected of being contraband or of having evaded the payment of the legal duties.

Sufficient powers not given to Collectors.

Collectors are constantly led astray by the differences that exist between the Imperial and Provincial Acts regulating the Customs. The Provincial enactment prevails so far as it may not be repealed or superseded by the provisions of the Imperial Act.

Collectors led astray by the differences between the Imperial and Provincial Acts.

The Committee adopts the opinion that every Collector should be furnished from the office of the Inspector General, with a carefully drawn manual of instructions and epitome of the various enactments relevant to the performance of his duties.

Instructions, &c., to be furnished Collectors by the Inspector General.

In proposing any alteration in the laws the Committee is aware of the necessity of great caution being used in any attempt at change. There is strong ground for assuming that the present state of the Revenue Laws calls loudly for revision. If this, however, were not effected with due care, and a careful adaptation of any fresh provisions to the wants and circumstances of the country, it would possibly be productive of more detriment and confusion than any contemplated advantages could possibly counterbalance.

Revision of the Revenue Laws necessary.

It is also to be considered that a rigid excise law, with extensive inquisitorial pow-

ers, if introduced, would be almost certain to become the object of popular dislike and serious complaint. In the Parent State its pressure is often severely felt and made the subject of violent animadversion.

Tea and Fish Oils  
principal objects of  
illicit traffic.

From information received by the Committee, it appears that the principal objects of illicit traffic in this Province are Tea and Fish Oils, of which large quantities are being constantly imported.

As to the extent to which this traffic is carried on, the Committee finds it impossible to form any sure calculation. The discontinuance of the bounty to the Oils of British Fisheries within the last few years, by raising the price of that article has, in all probability, given higher inducements to the introduction of the cheaper Oils from foreign states.

Probable inducements.

Amount of Tea  
annually smuggled.

It is suggested from an experienced quarter that not less than *Three Thousand* Chests of Tea are annually brought in smuggling to the Port of Toronto alone.

A Permit should  
be required on  
Foreign Goods.

It is suggested to the Committee, that a permit should be required for all foreign goods carried from one British Port to another, and that forfeiture should punish a breach of this direction. At present Collectors are required and obliged to give this permit, but the regulation is rendered nugatory by the absence of any penalty for its infraction. It is also stated that no check exists in goods arriving coast-wise, and that in consequence numerous frauds on the Revenue are committed.

At the Port of Toronto the want of a Wharf, or Storehouse, completely under the controul of the Revenue Officer, is frequently felt, as, "under the present system there is no controul over the Wharfingers, and Goods are frequently delivered without any authority from the Collector." From the same cause, also, difficulty is said to exist in the examination of packages in the presence of the public on the open Wharves. The Committee would beg to call attention to the following outline of a plan laid before the Inspector General, and by him transmitted to it. It is drawn by an intelligent individual, being on or near the frontier, and may be taken as a fair specimen of the many schemes for the protection of the Revenue necessarily predicated on the existence of active and well-organized customs and excise establishments. After proposing the appointment of a new officer, to be called a General Surveyor or Inspector, to whom certain Districts or limits should be assigned, "whose first duty should be to examine frequently the Collector's Books, and check the articles and charges entered by them;" doing so at irregular periods to ensure constant checks on those officers, it is proposed that—

"Every clearance and permit be duly registered, and only sufficient time allowed to convey the Goods to their place of destination, each of those permits to be sent to the Inspector of districts immediately on the arrival of the Goods, who would thus in many cases have an opportunity of inspecting the Goods on their arrival, and likewise of doing so when he met them in transitu. Let the Inspector

Outline of a plan  
for the protection  
of the Revenue.

register and file all such permits, and on his visit carefully compare them with the duties charged by the Collectors in their books."

As regards Tea.

With respect to the illicit trade in Tea, the same individual remarks,—

"Same as in England, hawking of Tea should be prohibited, and Merchants dealing in Tea should be obliged to enter their names with the General Surveyor sending in their permits. He to duly register the stock they thus legally get in; and all teas sold in quantities exceeding      lbs. to be accompanied by a printed ticket, supplied by the Inspector—a certain number of which to be supplied once a quarter to each Trader, and those not used to be returned and to fill up the counter parts thereof, which should at all times be open to the inspection of the General Surveyor. The Trader likewise to be compelled once a week to enter the total amount he has disposed of in smaller quantities. Thus a balance of stock could at any time be made, and any introduction of smuggled Tea to fill up the vacuum made by retail be effectually checked, while smuggled Tea in transitu would no longer be able to elude the officers."

In declining to recommend the adoption of any scheme like the above, the Committee in addition to its former objection on account of its certain expense, would desire to call attention to the fact, that were even an effective system in active operation, no corresponding benefit would accrue to the Revenue.

Tea contraband by  
Imperial Act.

The Imperial Act declares Tea altogether contraband, and, therefore, the creation of a large establishment to prevent its introduction would, if efficient, deprive the Revenue of the only aid it now derives from that article when brought in from the United States, namely, The produce of sales of Tea seized and condemned by rendering attempts at smuggling hazardous, and consequently of rare occurrence.

## HAWKING OF TEA.

Hawking of Tea, however, under any circumstances should be totally forbidden, and thus some difficulty be thrown in the way of disposing of it in small quantities throughout the country.

The Revenue at present derived from Goods imported from the United States, is stated to be even "under existing regulations, an increasing Fund." The nett proceeds thereof for the year 1838 amounted to £13,500 3 5*¾*, forming no inconsiderable item of the Provincial Resources.

Many articles from the United States are allowed free of duty into this country, while the same brought from here to that nation enjoy no reciprocal exemption. Hence may be instanced in illustration. There is a tax of considerable amount on Canadian Wheat and Flour at an American Port, though admitted free into these Provinces, one alleged reason is believed to be the desire to draw through the great highway of the St. Lawrence the produce of the northern part of this continent, instead of compelling producers to seek an outlet through the channels provided by the enterprize of our American neighbours. It has often been doubted however, if experience has justified the wisdom of this measure, or if something of a nearer approach to reciprocity of duties between this country and the neighbouring nation would not be productive

Revenue from imports from U. S.

Many articles free of duty.

Reciprocity of duties.

of more positive good than the present arrangement.

Those important national questions are not however within the sphere of the enquiries of this committee—the combined wisdom of the Imperial and Provincial Legislatures can alone find a remedy for evils proved to exist.

It may be here noticed, that a system has been introduced in England, which is said to stand the test of experience for the collection of certain duties.

Farming of duties in England

In certain districts the duties of a particular class are put up for public competition annually, and are farmed by the purchaser, who gives adequate security to the Government, and of course for his own interest makes every exertion to detect and prevent violations of the law: he acts as the Informer, and the Government enforces the law against offenders. Some taxes difficult of collection are said to be advantageously farmed in this manner.

The farmers are often large contributors themselves, and experienced in preventing fraud or evasions.

Such a system though at present unknown in this Province, might not be wholly unworthy of consideration, and could be easily tried in one of the Ports near the Frontier, and its results fully ascertained. It is noticed here merely as a method found to answer in the Parent state for the collection of certain duties difficult to be rigidly enforced and comparatively easy to be evaded.

The farming of duties might be tried.

In this Province ample room exists for the Ample room for imposition of additional duties, and for the of additional duties. enacting of salutary provisions to dispose and regulate the collection of customs, and so to manage this most legitimate source of Revenue, as to be most conducive to the best interests of the Public Services.

The Committee having thus commented on the present state of the Revenue derived from duties on Imports and noticed several imperfections apparently existing in the system of its collection, has but to express its conviction, that no relief from those deficiencies can be obtained till the Legislature shall have decided on the expediency of incurring the serious expence necessary for a rigid enforcement of the law and punishment of those attempting to violate its provisions. No relief but by rigid enforcement of law.

### INSPECTORS OF DISTRICTS.

Inspectors of Districts were created in the Inspectors of districts how first created. first instance by the Provincial Act 43, Geo. 3, ch 9, the duties of these officers may be summed up as follows: To receive applications for, and to issue Licences to Inn-keepers, Shopkeepers by whom spirituous liquors are Minor duties. retailed in quantities not less than a quart.— Keepers of Stills and Proprietors of Billiard Tables and Steam Boats, Licenses to Inn-keepers are issued on the production by the How license to Innkeepers obtained. applicant to the Inspector of the Certificate of the District Magistrates in General Quarter Sessions assembled by whom the amount to be

paid for the license ranging according to circumstances from £3 to £10 is settled.

**Other licenses.** Owners of Shops, Stills, Billiard Tables, and Steam Boats receive their Licenses from the Inspector on presenting a requisition describing the object for which license is required.

**How inspectors compensated.** The Inspector is limited by Statute 4 Geo. IV. Chap. 13. to the annual compensation by per centage on monies collected to £100.— There is no provision for the employment or remuneration of a Deputy, nor is any allowance apparently made for any extraordinary expense incurred in attempting the upholding or vindication of the laws. Thus the whole business of the district no matter how populous or extensive is thrown on one man alone, and unassisted in his labours. It might reasonably be supposed that every lawful means would be placed at the disposal of a functionary so situated and every facility be afforded him of detecting any attempted evasion of the law and of bringing the delinquent to summary punishment.

### STATE OF LAWS.

**Present state of laws for collection of duties inefficient.** The Committee is obliged to confess that the present state of the Provincial Acts relating to the duties of these officers, seems to preclude the possibility of an efficient discharge of their important functions, and that most serious injury is inflicted on the resources of the country by the many infractions of the law which there is every reason to apprehend are of daily oc-

currence in almost every district of the Province.

By the earlier enactments the inspector was allowed a per centage of five per cent on monies collected, afterwards, as we have seen his yearly stipend was limited to £100, and he had to depend almost completely on the inducements held out to informers to prosecute infringers of the law, and receive a moiety of the penalty recovered.

#### MOIETY TO INFORMERS.

But as if to complete the series of disabilities under which these officers laboured, it was directed by the Statute 6 Wm. 4 chap. 4, that "no part of the fines levied under this or any former act should be paid to any informer," thus virtually taking away the only means which existed of enabling a solitary individual in an extensive district to attempt the enforcement of the laws which he was aware were constantly violated.

With whatever dislike or disfavour the Legislature or the Public may regard that class of persons called informers, a sound policy would never prohibit their use as instruments in the hands of the Revenue officers, or deprive them of the only inducement they had in assuming a disagreeable and unpopular character.

Let the Home District be taken as an illustration of the working of the present system.— The office of Inspector is filled by the Hon. Alexander McDonnell, he has no deputy, clerk, Working of the present system.

or assistant of any description, no provision is made for the payment of any such, and his own per centage of £100 per annum precludes his being able to remunerate any such assistant.

This extensive district with a population of upwards of 60000 extending from Toronto to Penetanguishine, and from Whitby to the Township of Toronto, is utterly free from any local inspection, and the issuing of Licenses is left almost exclusively to the parties interested. If they come forward and require the necessary license it is given, if not they carry on their business without it, and from the constant impunity thus enjoyed by violators of the law, its provisions have become almost nugatory, and the Revenue is defrauded to an alarming extent which the present state of the Provincial finances would but ill seem to warrant.

Home District  
free from in-  
spection in  
effect.

System of is-  
suing Licenses  
is capable of  
improvement.

From the information obtained by the Committee in the progress of its investigation it would appear that the present system of issuing licenses is capable of great and immediate improvement. It is proposed therefore to review the various kinds of licenses, the manner of issuing them, and the checks, if any that exist to ensure regularity or correctness.

#### INNKEEPERS' LICENSES.

The Licenses to Innkeepers which in every District constitute the bulk of the aggregate annually issued, are subject to the following regulations.

The applicant goes before the magistrates of the District in Quarter Sessions assembled, and obtains a certificate to the effect that he is allowed to keep an Inn on obtaining a license, and paying a certain amount therefor, and giving certain security, after which the party is expected to proceed to the District Inspector to whom he pays the fixed amount and obtain the necessary license.

To this system two important objections are instantly apparent, 1st. Do all persons in the District who keep Taverns apply to obtain certificates? 2d. Do all persons obtaining such certificates proceed to the District Inspector and obtain the legal license? To the first of these questions the Committee finds some difficulty in yielding a suitable answer, no means being at its disposal by which the actual fact can be ascertained.

Reasoning, however, from the analogy of similar cases where parties under the like circumstances certainly do infringe the law, it may fairly be presumed that omissions occasionally occur.

The second objection is easily answered and the Committee from the information laid before it, can unhesitatingly declare that many persons obtaining certificates from the Quarter Sessions, do not take out license from the Inspector. Many also after obtaining certificates delay for many months applying to that officer.

*Midland District.*—Thus in the Midland District the number of certificates granted for the year 1838 was 159, the number of licenses actually issued was 139, shewing a loss to the Revenue of the duties on 20 licenses, out of the number issued 38 were during the last month of the year.

*Newcastle District.*—In the Newcastle District for 1838, 91 certificates were granted; 56 licenses were issued—loss 35.

*Home District.*—In the Home District including the city of Toronto, 222 certificates were granted—number of licenses issued 180—loss 42.

*Gore District.*—In the Gore District 173 certificates were granted, 124 licenses were issued—loss 49.

In the Eastern, Talbot, Johnstown, Bathurst and London Districts, it is reported to the Committee that similar evasions of the law take place, convictions are but rarely obtained, and the penalty still more rarely is enforced.

Inspectors complain of the difficulty of convicting offenders.

Inspectors of Districts make strong complaints of the difficulty of convicting violators of the law, one of the principal of which is that no power seems to be in the Magistrates of awarding a sufficient punishment on witnesses, declining to obey the summons to appear. A difficulty also exists of procuring the attendance of Magistrates to hear the complaint of the Inspector.

(By Stat. 2, Vict. chap. 4, Sec. 2, power of

imposing fine and imprisonment is given to Justices, not as to amount of fine.)

It is also complained that the proof necessary for a conviction for breach of the laws regulating Taverns is unnecessarily strict. It is at all times difficult to procure credible witnesses to swear to the fact of spirituous liquors being actually sold on the premises, and offenders frequently escape through the want of evidence, legally unobjectionable though their guilt may be apparent to all.

### COSTS.

No provision exists whereby the Inspector can be re-imbursed for his costs incurred in unsuccessful prosecutions, and the dread of being compelled to disburse them from his private funds may frequently deter that officer from proceeding against offenders.

No provision  
to reimburse  
Inspectors for  
costs incurred.

The absence of sufficient inquisitorial power in Inspectors is also complained of, and it is suggested to the committee that additional powers of entering and searching suspected places would be attended with advantage.

To increase  
the power of  
Inspectors.

After recapitulating the above objections to the present system of issuing Tavern Licenses, the Committee would now venture to recommend some practical alterations which appear calculated to remove or at least alleviate the present difficulties. The Committee would, however, premise any particular recommendations by expressing its decided opinion, that it is absolutely necessary to digest all the enact-

ments on the subject of the internal Revenue, and recast the various disjointed and contradictory provisions into one harmonious, and equitable code.

## PROPOSED ALTERATIONS.

### TAVERN LICENSES.

As a remedy for the first objection—whether all persons keeping Taverns apply for certificates to the Quarter Sessions, the only course that occurs to the Committee would be to

Tax recom.  
mended to be  
imposed on ta.  
vers. have it provided by law that a small tax (a nominal one would suffice,) be placed on all Taverns in the District. The assessors would then be compelled to return the number of such places in their lists and a check would thus be obtain by comparing the number of applicants for certificates with the number thus returned.

To remedy the 2nd objection, the validity of which appears from the statistical information collected by the Committee, viz: That all persons who obtain approvals do not regularly take out their licenses from the Inspector, the following regulation is recommended for adoption.

Persons obtain-  
ing certificates  
from Clerks of  
the Peace,  
bound to take  
out license  
within 1 or 2  
weeks. That on a person obtaining his certificate or approval, from the Clerk of the Peace, he shall be bound to take out his license within one week, (or two) from the Inspector, or in default thereof that the certificate be declared void, and the holder be liable to a prosecution, on which the issuing of the certificate should

be held sufficient evidence to ensure a conviction.

Nothing unreasonable or over rigorous could result from the adoption of this course, as any one applying for and obtaining a certificate would keep or purpose to keep a Tavern.

From the experienced difficulties of obtaining convictions, the committee would strongly urge the expediency of introducing into any new enactment full directions as to the method of proceeding, the manner in which the tribunal should be constituted, that so many Justices should hear the complaint, receive certain fees which might tend to induce a more regular attendance, that a summary and explicit power of enforcing the attendance of witnesses, and punishing contempt or disobedience by fine or adequate imprisonment, should be given to such Magistrates, which fine should in all cases amount to a greater sum than is paid for the license, to obviate the chance of bribery by the defendant, that the nature of the proof necessary for conviction be explicitly defined, that every relaxation of the ordinary rules of evidence consistent with common justice, be admitted in favour of the prosecution and the "onus probandi" as much as possible be thrown on the defendant.

In any new e.  
nactment to  
empower Ma-  
gistrates to pu-  
nish offenders  
by fine or im-  
prisonment.

In every well digested and practical system of excise this principle prevails, and is generally found best calculated to answer the ends of justice, and punish offenders. In some parts of the empire it is held to be sufficient

proof of the sale of liquors in a house, if measures, vessels, glasses, and other ordinary incidents to that business be found.

### COSTS.

Inspectors to  
be reimbursed  
costs.

It is also recommended that provision be made to reimburse the Inspector for Costs actually incurred when he fails in obtaining a conviction and the fault rests not with him.

### MOIETY TO INFORMERS.

Moiety restor-  
ed to informers.

The Committee would now wish to call attention to a defect in the present system already noticed which it would respectfully submit has undermined the efficiency of the Revenue Laws, to an important extent. It is unnecessary to make further comment on the experienced impolicy of taking the moiety of the penalty from Informers and the Committee most strongly would urge the propriety of at once restoring that inducement by repealing the 2nd clause of the Statute of 6 Wm. IV, Chap. 4, so far as it prohibits such necessary stimulants to unpopular exertions.

### SHOP LICENSES.

With regard to the system of issuing licences according to statutory regulations to shops in which spirituous liquors are sold, the Committee has found no means of ascertaining whether the law in respect thereof is enforced or evaded.

Licenses are issued by the Inspector on the <sup>System of issuing shop licences.</sup> party applying giving certain information as to the situation of his shop, and paying the prescribed amount.

By a return made to the House of Assembly of the number of merchants shops in the Province, and a comparison thereof with the returns of the various Inspectors, it appears that in the year 1836, there were in all 1163 Shops, out of that number 455 were licensed to sell spirituous liquors and wines, but whether any of the remaining 708 shops, by law, should have had licenses, the Committee has no means of discovering. In the Home District the number of shops licensed in 1838 was 43, no decided opinion is advanced as to the probability of the law being rigidly enforced.

It is recommended however, that these places should be returned by the assessors (which can be effected by putting a small tax on them) & thus afford the district Inspector, some check on the number of licenses that ought to issue.

The Committee would of course apply its former recommendations as to proceedings against offenders, evidence, costs, witnesses, &c. &c. to the present case, suggesting in addition that a more explicit description of the liquors to be sold should be given, as evasions have taken place in consequence of ambiguity in preceding Acts, respecting liquors distilled, and not distilled—spirituous and not spirituous.

After commenting on the remaining duties of the District Inspectors in issuing Still, Bil-

liard Table, and Steam Boat Licenses, the Committee proposes to offer some suggestions on the propriety of increasing the efficiency of that officer's Department so far as may be consistent with the pecuniary circumstances of the Country and the value of the object to be gained by the proposed alterations.

### STILL LICENSES.

*Issuing of still licenses.*

By the Statute 34 Geo. III Chap. 11, a duty was first imposed on stills, and a license directed to be issued on requisition by the Secretary of the Province. By a subsequent Statute, the granting of such licenses devolved on the District Inspector, and succeeding enactments have prescribed various regulations concerning the amount of duty, the method of estimating the duty, and the Penalties for an infringement of any of the legal provisions.

From the information laid before the Committee, and an examination into the Statutes *Reform required.* affecting this branch of the Revenue, it may with confidence be asserted that in no part of the Public accounts or of the Statute law of the Province is reform more peremptorily required.

Under the existing regulations no means are available except personal exertion and local searches, to detect a violation of the laws on the part of the proprietors of Stills.

The Inspector issues the license to the party applying on perusing the requisition, and receiving the amount of duty.

In the requisition the applicant states the number of gallons which his still contains, and the Inspector must either take for granted the truth of such statement or travel on his own expense to whatever part of the district the still is kept to test its accuracy.

By examining the returns of the various Inspectors for the year 1838, it appears that in all the districts in the Province (except that of London for which no returns had been received) the numbers of licensed stills was 75.

In the Home District the numbers of stills paying duty was 11.

The committee does not hesitate to express its opinion which coincides with that of persons well acquainted with the country that in the same District above 75 stills or as many as pay duty in the whole Province are at work.

The immense loss to the Revenue under this head must be apparent to even casual observation.

#### CONTENTS OF STILLS.

But it is not in the number of the stills alone that the Revenue is defrauded. As before remarked the duty is calculated on the number of gallons the still is capable of containing. In nearly all cases the Inspector has to trust to the honesty of the applicant in stating the contents truly and fairly.

It is certainly an invidious task to charge a large body of traders with direct and systematic falsehood in the Requisitions they furnish

Applicants required to state the Number of Gallons in the requisition.

Inspectors returns for 1838.

Collection of duties on stills not enforced

Inspectors have to rely on the statements of applicants.

unless such charge be substantiated by positive testimony.

It is however the duty of the Committee to point out discrepancies or distortions apparent in the face of the information laid before it.

Thus in the books of the Inspector of the Home District the respective contents of nine stills are set down according to the requisition of the owners as follows : 80 Gallons—97—80—15—110—30—80—100—86.

It is considered that a still containing 150 Gallons is under the average size,—some running up to 400 Gallons—the average perhaps might be moderately calculated at 200 Gallons.

Inspector has no personal knowledge of the Distilleries in his jurisdiction.

In this district the Inspector does not pretend to a personal knowledge of the several distilleries in his jurisdiction, so that as has been before stated the present condition of the law, and of the department of the district Inspector leaves it completely in the power of the Distiller to return the capacity of the still as he pleases.

Injury to the Revenue.

A glance at the above statement of the contents of stills as opposed to the notorious fact of their general capacity will afford some idea of the extent of the injury inflicted on the revenue.

Vessels used in distilling.

It is proper to notice also another method by which the distiller is enabled to evade paying the full amount of the duty prescribed by law.

The Statute 4 Geo. IV, Chap. 13, directs “ That every Wooden Still having an addition-

“al tub or vessel whether placed on the top or  
“in any other manner attached to such still,  
“serving the purpose of a cap or receiver of  
“steam, and also every tub or wooden still  
“which shall be separated into different divi-  
“sions for the purpose of receiving or running  
“the low wines or for heating or preparing the  
“beer or wash for charging such still, or that  
“may be so divided as aforesaid for any pur-  
“pose whatsoever, every such tub or wooden  
“still shall be liable to and charged with the  
“payment of duties upon the whole capacity of  
“the same.”

By a subsequent clause of the same Act (6) it is directed “that the tub or receiver of the beer or wash only shall be deemed and taken to be a still and subjected to the payment of duties according to the intent and meaning of this Act.”

This act seems to contemplate the use of but one vessel on which duty is to be charged but provides for imposing a duty on “every tub or receiver of the beer or wash,” in no case does it appear that the distiller returns more than the one vessel, but it is reported to the Committee that nearly all the distillers in the country adopt the practice of employing a second or even a third vessel called the Faint still, doubler or other name, and carry on the process of distillation in both with additional rapidity and capacity. By a reference to a diagram returned by the Inspector of the Gore District, and appended to this report, it will

Diagram from  
Inspector of  
Gore District,  
see appendix.

more readily be seen how the provisions of a somewhat ambiguous Statute are generally either construed or evaded.

Doubts as to the precise construction of the Act 4 Geo. IV, 13. ch. 13. Some doubt has been expressed as to the precise construction of the 4. Geo. IV, Chap. Act 4 Geo. IV, 13. Some of its clauses apparently involving a contradiction, but it cannot be reasonably believed that the intention of the Legislature could ever have been to permit the use of additional vessels by which double or treble the quantity of spirit may be produced than is accounted for to the Revenue.

The Statute also directs the Inspector to allow for the operation of the steam in wooden stills half the contents of the vessel in calculating the duty, but as 1s. 3d. extra per gallon is imposed, the actual amount remains as before. It is feared that by using a cap or receiver of steam placed over or attached to the main vessel the Revenue is also injured.

To these several objections it may be answered, that the District Inspector is directed and empowered to test the accuracy of the Distillers requisition, by personally examining, guaging, or measuring the Still. It has been already noticed that great difficulties lie in the way of this actual inspection, from the small allowance granted to the Inspector, the want of adequate assistance, and the insufficiency of the means of obtaining conviction.

It is also complained that the Inspectors are only empowered to enter into licensed Stills for the necessary searches, and that an unlicensed

Answers of Inspector of Mid-land District.

Still may be in full operation, without that officer being able by entry to obtain the required proof.

By Statute 4 Geo. 4, ch. 13, it is further directed, that if the Still be stated in the requisition to contain so much by *guaging*, the Inspector must *guage* it—if by *admeasurement*, he must *admeasure* it—here is a difficulty. If it be necessary for the Inspector to guage the Still, he will have to procure the attendance of a scientific guager to bear testimony to the result, and bear the expense of bringing such a person to any part of the District where the Still may be situated.

Measuring and  
guaging.

Deeply sensible of the necessity of effecting an immediate change in this much deranged branch of the public revenue, the Committee has decided on suggesting the following alterations in the existing system.

In the first place, it is much to be desired that the District Inspector should have some means of ascertaining, independent of his own department, the number of Stills in his jurisdiction, such a check might be obtained by adopting the former recommendation of the committee, as by placing a small tax on Stills, compel the tax gatherer or assesseor to return them in his lists. Previous to the suggestion of any further alteration, the committee must express its decided opinion of the imperative necessity of increasing the efficiency of the District Inspectors' Department.

Alterations  
suggested by  
the Committee.

It has been already noticed that no provision is made for the payment of a deputy. The Committee is of opinion that to prevent the laws becoming nugatory in many parts of an extensive District, additional assistance must be afforded.

Per centage to  
Inspector.

It is recommended that so much of the Statute 4. Geo. IV, Chap. 13, as limits the percentage of the the Inspector to £100 per annum be repealed and a certain scale adopted giving that officer — per cent on sums collected till he has received £100, then a decreasing percentage on further collections till the annual amount should reach a certain limit in the discretion of the Legislature.

Thus would a stimulant be given to the exertions of that officer, and he would both be induced, and enabled to take active personal steps to detect and punish fraud and not content himself with remaining in his office to await the requisition of those sufficiently honest to desire to obtain the legal license.

Deputy Inspector.

As an increased amount of business may be reasonably anticipated, simultaneous with the restored efficiency of the Revenue Laws, the Committee is of opinion that provision should be made for the remuneration of a Deputy or Assistant Inspector when required by the exigencies of the District.

The committee weighed well the advantages before deciding on recommending a Deputy.

As any increase in the number of paid servants of the public should be carefully considered before carried into effect, the Committee has weighed well the advantages to be

gained by the employment of an additional officer before deciding on recommending such a step, which, however, it fully conceives to be justified on the strictest economical principles.

An active deputy could certainly at least once a year make an inspecting tour through the district, make accurate lists of the number of places which ought to be licensed, enter, search and examine all suspected places and by observation and actual admeasurement test the accuracy of the requisitions, sent in to the Inspector's Office.

It is in vain to propose alterations however salutary, if persons be not appointed capable to see them duly carried out, and no more advisable or economical plan has occurred to the Committee than the appointment above recommended.

It would perhaps, be some additional check on Distillers or applicants for shop licenses were they compelled to swear to the correctness of their requisition with the pains and penalties of perjury attached to any violation of the oath. It would also be desirable that Oath to accompany requisition. each requisition should specify the exact location of the place for which a license was required.

Full powers of entry at all seasonable hours should be given to the District Inspector, and those acting under him, into all suspected places *licensed* or *unlicensed*, for the purpose of making searches or of measuring the contents

of the vessels used in distillation and strong penalties should be provided, to be levied in a summary manner on all persons obstructing the officer in his lawful duty..

The observations previously made respecting the attendance of Magistrates, to hear complaints, the compelling the attendance of witnesses, and the necessity of relaxing in favour of the Crown as much as possible, the strict rules of evidence will apply equally to the collecting of the duty on stills.

The Committee is induced to recommend the introduction into any new enactment on this subject, of an explicit and positive direction as to what vessels are to be considered as liable to the duties. Either the present law is ambiguous and defective, or distillers evade its provisions. It should be provided, that the

Duties should be laid on certain vessels for stilling.

description whatever, in which the Beer or Wash is heated or prepared, or in which the low wines are received or run, or which may in any wise act, or be used as attached, connected with, assistant or auxiliary to, the vessel ordinarily denominated the Beer still—or any vessel, by the use of which the process of distillation is carried on, with greater facility or productiveness than would be effected by the use of one Beer still only, and also that care be taken that no evasion of the provisions of the law take place by the use of Cap or receiver of Steam placed on or attached to any

still in calculating the capacity of such still.

It must be recollect, that so long as the duty is levied in the manner at present prescribed the owner of a still by working extra hours can make double the quantity than can be produced by another of the same capacity in the ordinary working hours, without paying extra duty.

It has been suggested to the Committee, <sup>Duty on fermenting tub.</sup> that by levying the duty on the fermenting tubs advantage would arise to the Revenue, and fraud be made more difficult. But such an alteration is open to this objection, that there are two methods of working, in one of which, the wash is of double the consistence of the other, and consequently of much additional strength.

Another method has been mentioned, which <sup>Duty on Grain.</sup> is certainly deserving of attention though not entirely free from objection, viz : To levy the duty on the grain consumed in distilling, and thus do away with all labour of measuring or guaging Stills or Beer Tubs.

It was proposed to compel every Distiller <sup>Statement to be furnished of grain used.</sup> monthly or quarterly (as agreed on,) to furnish a statement under oath to the District Inspector of the quantity of grain used in his Distillery, on which, that officer should charge the legal duties. It was considered that by imposing a very heavy penalty with forfeiture of Distillery &c., it would ensure a fruitful return especially as it would be in the power of any workman in the Distillery to inform on the

owner, and make him liable to the fine. His return might specify the various parties from whom he bought grain, and thus if he omitted any one name, the Individual so omitted might also, perhaps, come forward and by proving the sale, convict the infringer of the provisions of the law and the sanctity of an oath.

Although the Committee be not prepared to recommend the adoption of this plan, it has deemed it right to submit its outlines as worthy of attention.

Violation of the  
law prohibit  
future license  
being given to  
the person in-  
fringing.

It is recommended that any penalty or forfeiture for violation of any clauses of the law relating to stills should be accompanied by a prohibition against granting a license for the space of years to any person convicted.

By the Stat. 50 Geo. III. ch. 6, a duty of Billiard Tables £40 per annum is directed to be levied "on "all and every person or persons having in his, "her, or their possession, custody or power, "any Billiard Table set up for hire or gain "directly or indirectly, whether such person "use or permit the same to be used or not."

See appendix  
paper marked  
C.

It is notorious that several Billiard Tables are used in the towns of the Province for gain, yet it appears from the Returns of the District Inspectors, that for the years 1836, 7, 8, 9, only two licenses were issued of this description.

Inspectors complain of the difficulty of procuring legal evidence of the Table being used for gain, no person being willing to give the necessary testimony.

It is recommended that such an alteration should be made in the law as would render every Billiard Table liable to duty, if kept by the owner of any Tavern, Ordinary, Victualling House, Confectionary, Ale-house, or other place of public resort, or entertainment, or Boarding house, or in any attached to the same; in short, every table unless kept in a private house.

And under the peculiar circumstances of this country, the "onus probandi" might very justly be thrown on the Proprietor of any Billiard Table. The fact of the Public being admitted to the room might also be declared *prima facie* evidence of the table being used for gain.

*Steamboats.—The Duty on Steam Boats according to the answers of the Inspector General* "has not been collected, except in a few instances either in the present or in the previous year." The committee cannot forbear strongly animadverting on the apparent neglect of this branch of the Revenue.

Duties on  
Steamboats not  
properly col-  
lected.

It is complained "that no particular Inspector has any defined jurisdiction for the reason "that no boat is attached to any prescribed District," and further that no provision was made for the levy of fines on the premises of the Boat evading the duty.

(Answers of In-  
spector Mid-  
land District.)

No boat attach-  
ed to any par-  
ticular district.

It is suggested that this could be simply remedied by declaring each Boat within the jurisdiction of the Inspector of the District in which she wintered, and by giving the required power of entry on the premises.

Remedy pro-  
posed.

Hawkers and  
Pedlars.

The Statute 56 Geo. III, ch. 34, declares the duty of issuing licenses to Hawkers, Pedlars and petty chapmen, on the Collectors of Customs.

Report of In-  
spector Gener-  
al.

It is suggested to the Committee, and certainly appears to it reasonable and advisable that the District Inspector should issue such licenses, their jurisdiction being more conclusive than that of the Collectors, who generally confine their observations to their respective ports.

Auction duty  
law has expi-  
red.

*Auction Duties.*—The law authorizing the levy of this branch of the Revenue is reported to have been recently allowed to expire, a renewal of it as affording a legitimate aid to the Provincial Revenues is of course desirable.

3rd. Division.

It now remains for the Committee, in accordance with its proposed system of enquiry to enter on the investigation prescribed by the 4th, 5th, 6th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th heads of its Instructions.

(Answers of In-  
spector Gener-  
al, appendix.)

Public account  
ants divided in-  
to 3 classes.

It appears that Public Accountants may be regularly divided into three classes, 1st. The Heads of Departments at the Seat of Government—The Receiver General—The Commissioner of Crown Lands—The Surveyor General of Woods and Forests—Secretary of Clergy Corporation.

All these functionaries with the exception of the Surveyor General of Woods and Forests are required to submit their accounts to the

Department of the Inspector General for examination and audit.

The Head of that Office reports "sufficient regularity does not appear to have been observed in this particular, and I also find that delays have occurred in their inspection in this office, after their transmission to it, when other business has intervened."

(Answers of Inspector General.)

Sufficient regularity not observed.

The Committee cannot proceed without animadverting on the occurrence of any irregularity or delay in the transmission or audit of Accounts of such importance as those just alluded to.

With respect to any delay occurring in the office of the Inspector General it is to be remarked, that nothing, if possible should be permitted to interfere with the immediate audit of these Accounts.

Nothing should prevent immediate audit of accounts.

If the assistance at present afforded in that office be insufficient for the punctual despatch of business, it would be advisable to allow such extra aid as would obviate the recurrence of such detrimental delay.

As is suggested those officers could be directed to furnish their accounts and vouchers, for audit, to the Inspector General, within — days after the expiration of the semi-annual period appointed for their return.

It is also remarked, that the instructions from the Lords of the Treasury, do not seem to contemplate the Surveyor General of Woods and Forests acting as a public accountant, yet without any change in these Instructions, that

Surveyor General of Woods not included in Instructions.

officer has nevertheless apparently from necessity always been a Receiver.

Collectors and  
Inspectors.

*Collectors & Inspectors.*—Under the 2d class of Accountants are comprised Collectors of Customs and Inspectors of Districts.

Time allowed  
for their re-  
turns.

As set forth in a preceding part of this Report, Collectors are allowed 40 days. Inspectors one month after the expiration of their respective quarters, to make their returns.

Fiscal Year.

Some unnecessary confusion takes place in consequence of the Fiscal year ending at periods, with different accounts.

One common  
termination of  
year necessary.

The Committee would strongly recommend the adoption of one common termination for the year, when accounts are to be closed, and that 20 days as an ample sufficient period should be the time allowed to all these officers to return their accounts.

*Sheriffs, Clerks of the Peace, Magistrates &c.*  
—Under the 3rd Class, are ranked Sheriffs, Clerks of the Peace, Magistrates, Colonels of Militia, &c.

Irregularity in  
Returns.

Great irregularity has occurred in the transmission of returns of Fines, and Forfeitures, by Sheriffs—Clerks of the Peace are open to the same charge.

A method of ensuring regularity in the return of fines &c. by Sheriffs, and Clerks of the Peace is believed to form part of the Report of another Committee, to whom the Sheriff's Department was especially submitted for inquiry.

*Colonels of Militia* according to the existing law make their returns to the office of the Adjutant General.

*Magistrates Returns.*—It appears that Magistrates “do not seem to consider that they are required to make any return to this office of fines or forfeitures or Duties on Ale and Beer Licenses collected by them and payable to the Receiver General.”

It is much to be feared that great irregularity has prevailed in the levying, and paying over to the public use, of this part of the Revenue.

In an extensive and thinly settled country, it is most difficult to ensure the constant superintendence of an active correcting power over the ill kept accounts of such an unorganized body as the Provincial Magistracy—whom the enactments of Statutes have converted into Public accountants. They are directed to pay over moneys collected to the Receiver General, but it is needless to remark on the latitude allowed to the will and pleasure of the parties themselves by the apparent absence of any inspecting or coercive power by the intervention of which, laxity might be prevented, and default if existing be discovered and punished.

A reference to a statement of moneys received from Magistrates by the Receiver General from the 1st January 1838, to the present period, in the appendix to this Report, will shew the paucity, and very small amount of Revenue derived from this source.

Magistrates make no returns.

Though direct. ed to do so.

(See statement from Receiver General's office appendix.)

The Inspector General suggests the possibility of placing some check on the receiving of fines &c. by Magistrates, by directing them "to send quarterly returns of the fines levied

*Check recommended by Inspector General.* " by them, with the names of the parties, and "the nature of each case to the Clerk of the " Peace, who might then prepare two abstracts, " one of which after having been read in open " Sessions should be transmitted to this office, " and the other posted up conspicuously in the " Sheriff's office, or in some other public " place."

*Recommendations of Committee.* This method might possibly effect some amelioration, but the Committee is induced strongly to prefer the adoption of some system by which the Justice of the Peace would cease altogether to be a Public Accountant, as it is needless in the present social position of the Province to expect unerring regularity and exactness in his accounts, while his situation is (or at least ought to be) merely honorary and not designed as a source of positive emolument.

*Ale and Beer Licenses might be issued by Inspectors.* Some advance towards effecting this object might be made by acting on the recommendation of the Inspector General, and transferring the issuing of Ale and Beer Licenses from the Magistrates to the District Inspectors.

With respect to Fines, Penalties, &c. now collected by the Justices, a new system might be adopted, by which either the District Inspector, or some other regularly paid officer, from whom security is required, might become the

sole receiver of moneys arising from sentences of Magistrates; thus on a fine or penalty being imposed by a Justice or Justices, he or they might notify the Inspector or stipendiary Magistrate (if such an officer were created) of that section of the country, of the particulars of the fine so imposed, and that functionary under direction of the Magistrates might then be empowered to proceed to levy the same, and thus become the Receiver and responsible Accountant, for all the money collected under the warrants of Justices of the Peace—in place of there being a number of accountants difficult to be checked or controlled, scattered over the country.

Recommendation respecting fines.

Moneys directed by present enactments to be paid by Magistrates or other local officers, might it is submitted, be with at least equal propriety and regularity disbursed to those receivers, when levied as above suggested by the Inspectors on stipendiaries under the general superintendance of the Inspector General.

*Militia Officers.*—It is suggested that Militia Officers might be required to send quarterly reports of fines and exemption money collected, to the Clerk of the Peace, who, after reading them openly at an appropriate period during the Quarter Sessions should forward them to this Department. They might also, if thought advisable, be posted up in the Sheriff's Office, and thus form a double check upon the Accountant.”

Militia Officers should make quarterly returns of fines, &c.

As a similar enquiry is directed by the Instructions of another committee on the Militia,

it is not considered necessary further to comment on existing regulations.

Sufficient power exists for prompt transmission of accounts.

It appears from the information laid before the Committee that so far as Collectors and Inspectors are concerned, "a sufficient power at present exists for compelling prompt and regular transmission of accounts," and also that reasonable means are in the power of the Inspector General for ascertaining the fidelity of their returns.

Comptroller might be appointed, but for the expense.

That officer suggests the possibility of providing a check on Collectors of Customs, by appointing a Comptroller at each Port, but the expense of such an office must render its creation at present inexpedient.

Form of rendering accounts.

With respect to the form in which accounts are rendered to the office of the Inspector General, the Committee is informed by that functionary, that as far as Collectors of Customs are concerned, he "has commenced certain regulations which when matured and fully introduced, will accomplish all needful improvement with respect to the returns of that class of Public Officers."

Alterations may be necessary.

In the event of the adoption of the recommendations contained in this report, further alterations in the form of rendering accounts may be found necessary.

In answer to the inquiries of the committee "whether the accounts of moneys expended by "Commissioners appointed under acts of the "Legislature be duly examined at this office,"

it appears that these accounts are not generally transmitted to the Department of the Inspector General. The general impression seems to have been, that these Commissioners were only answerable and bound to furnish their accounts to the Legislature by whose vote their duties were created. Some of these Commissioners transmit their returns to the Lieutenant Governor—others directly to the several branches of the Legislature, these returns are also made at irregular intervals, sometimes in the middle, often near the close of the session.

Under this system it would seem, that no other means exist of checking these important returns, than the laborious process of a Parliamentary Committee, a circuitous, & not always infallible method of eliciting the true state of complicated accounts.

The Committee is induced strongly to recommend some more expeditious mode of controlling the receipts and disbursements of the large sums frequently in the hands, and under the orders, of the Parliamentary Commissioners.

The Inspector General suggests, “ the most expeditious course would be to direct all returns of public expenditure by Commissioners, to be prepared in triplicate, and sent to the Provincial Secretary. The Lieutenant Governor could then cause one copy to be sent to the Inspector General’s Office for examination, while the other two copies might be

Accounts of  
Parliamentary  
commissioners.

Some more expeditious mode of controlling receipts and disbursements of commissions recommended.

Suggestion of Inspector General.

"laid before the Legislative Council and Assembly. To this office it would be merely necessary to furnish the accounts and vouchers."

~~Great improvement would be introduced by the adoption of this method.~~ By the adoption of this method, certainly a great improvement would be at once introduced, and error or carelessness be less likely to pervade these important returns.

~~A Board of Works would be the best check.~~

The appointment of a Board of Works has often been discussed, and doubtless if once in active operation would afford the most complete check upon disbursements on account of Public Improvements. The Committee however, is not at present prepared to enter into the discussion of this important subject, or give a decided opinion on the advisability of creating such an Institution.

*Ferries and Mill-seats.*—It appears that no Returns are made to the office of the Inspector General of the rents of Ferries and Mill Seats. It appears to the Committee, that such an alteration is most advisable as would bring under the review of this department, this

~~This branch of the accounts shcul be bro't under review of Inspector Gen-eral,~~ branch of accounts, as the Head of the Office suggests he should be "duly furnished with such information respecting the terms of all licensees, and that all lessees who fall in arrear to the extent of more than one periodical payment should be proceeded against, and be liable to a forfeiture of their license or licenses."

In accordance with the principle that this department should act as the General Com-

troller of Public Accounts, the Committee And all branches of the public revenue should be audited by him, without exceptions. feels bound to recommend that no exception should be allowed to exist to the general rule, "that this office should see that the Revenues "of every kind are regularly, and in due form, "brought to account."

Suggestions of Inspector General respecting Fees on Patents.

*Fees on Patents.*—The Inspector General has suggested a method of providing an additional check on the accounts of the Receiver General with regard to the fees on Patents, "By requiring the Surveyor General of Lands "to make a semi annual report to this office of "fees paid to the Receiver General founded "on the receipts brought to him from that "officer, by persons obtaining Patents for "Lands subject to the payment of fees.

"The Receiver General might also be required to produce vouchers shewing the premium paid by the Purchasers of his Bills of Exchange as checks upon the accounts relating to that branch of his receipts."

Receiver General should produce vouchers shewing premium on exchange.

*Commissioner of Crown Lands.*—The same officer has also suggested another plan of anticipated improvement relating to the Commissioner of Crown Lands, which the Committee feels bound to notice, without joining in any recommendation of it, more especially as the officer to be chiefly affected by the change is not deputed by the local Government, but the appointee of the Lords of the Treasury.

Suggestion of Inspector General respecting Commissioner of Crown Lands.

"The Commissioner of Crown Lands for "example—under a new system might hand to

“ an individual offering payment of an instal-  
 “ ment due on Land a certificate of the amount  
 “ to be paid, addressed to the Receiver Gene-  
 “ ral upon which that officer after a due  
 “ entry in his Books might write a receipt.—  
 “ The certificate thus received when returned  
 “ to the Crown Lands office might then form  
 “ an authority to the Commissioner for giving  
 “ an acknowledgment of payment to the pur-  
 “ chaser of the Land, and serve as a most  
 “ satisfactory voucher to his accounts as well  
 “ as a check upon the accounts of the Receiver  
 “ General.”—The two officers would in fact to  
 this extent mutually check each other, and the  
 risk of loss or misappropriation of Public  
 money be effectually guarded against.

By this suggestion the Commissioner of Crown Lands and Receiver General would check each other.

Balances due by accountants. The Committee has obtained several statements shewing the amounts due by former Collectors and Inspectors, and the Balances due by officers now holding those appointments.

To be seen in appendix D. By a reference to a paper marked D, appended to this report, will be at once seen the various Balances due by officers once holding the situations of Collectors and Inspectors, the date of each Balance accruing due,—and other information connected with each separate transaction.

It is much to be regretted that those outstanding Balances form in the aggregate the sum of £5425, 16s, 9½. The earliest of them

appears to have been due in 1821, and the latest seems to have accrued anterior to the time of the present Inspector General entering on the duties of his office.

Balances outstanding since 1821, till present Inspector General took office.

The statement marked F. in the appendix, obtained from the office of Her Majesty's Attorney General will exhibit an epitome of the proceedings instituted by the Crown for the recovery of these debts.

Proceedings instituted for recovery of the same.

The statement marked E. in the appendix will shew the Balances now outstanding in the hands of the present Collectors.

Balances outstanding in hands of Collectors.

*Chartered Bank, Depository of Public moneys.*

—The Inquiry directed by the 15th head of Instructions to this Committee as to the admissability of making one of the Chartered Banks the sole Depository of Public moneys, and the medium of payment of all public Debts, is one of such deep importance to the best interests of the community, that the most mature reflection alone would warrant the pronouncing of any opinion likely hereafter to influence the fate of any measure calculated to effect the change above submitted for consideration.

Importance of the inquiry respecting chartered Banks being depository of public moneys.

It is not doubted by the Committee but that substantial benefit would result to the Public service by the adoption of a change like that above supposed, necessarily predicated on the existence of a Banking Institution of indisputable solvency, and credit, with which the con-

Benefit would result therefrom in case of the existence of a Bank of indisputable solvency.

templated arrangements could be presently entered into.

Any derangement of affairs of such Bank would alarmingly affect the public credit. It must be obvious however, to the least reflecting mind, that any temporary derangement in the monetary affairs of a Bank which had once been made "The sole depository of Public moneys, and the medium of payment of all public debts," would necessarily have an alarming and dangerous effect on the credit and resources of the Government with which it was thus closely connected.

While the Banks of this Province retain their present character of Institutions upheld

<sup>The present character of</sup> Banks would ~~jeopardize financial affairs of the province.~~ solely by their respective private resources, it is most difficult for the Committee to take

upon itself the recommendation of a change so complete and organic, as to jeopardize the whole financial affairs of the Government of the Country on the anticipated stability of any institution how high soever may be its individual reputation.

Additional stability and credit would of course be attached to the character of a Bank whose resources had been so materially ex-

<sup>Stability of a</sup> Bank would be increased by being made "the sole depository of all public moneys," but the peculiar organization of the Institution would remain the same, and open to the objections above noticed.

A difficulty might also arise in respect of the security required of the Public Accountants.

There is little doubt but that most of those officers would prefer having the moneys for which they are respectively accountable, in a safe Banking Institution, but perhaps their securities might not be willing to encounter the double risk of the possible insolvency both of their Principal and the Bank thus made "The sole "depository of public moneys."

A difficulty might arise from the security required from Public accountants.

In the answers of the Inspector General will (See answers of Inspector General.) be found the opinion on this subject, which the knowledge and experience of that Functionary have warranted his advancing;

Without a much more protracted and extensive inquiry than any which it is now in the power of the Committee to bestow, it must hesitate to express any decided recommendation on this most important question.

Committee can not recommend the measure without a further inquiry.

The wisdom of the Legislature may fitly be employed on a subject of such moment, while the opinions of individuals, in the capacity of members of a Committee like the present, should only be advanced when based on the most accurate calculation, and presented as the fruits of combined research and experience.

This subject a fit one for the consideration of the Legislature.

## CONCLUSION.

The result of the inquiries of the Committee may now approach to a conclusion. If presented in form unexpectedly voluminous, it is expected that the great extent, and important nature of, the many subjects submitted to its review will be remembered, and the diffi-

Concluding remarks.

culty of condensation considered, before the charge of prolixity is advanced. Speculation has been but sparingly indulged in, unsubstantial censure, or animadversion carefully avoided.

Many of the views of the Committee are, of course, open to objection, and many of the subjects introduced might have been commented on at greater length, and doubtless with greater perspicuity, had time or circumstances permitted. It may, however, be reasonably anticipated that no alterations are recommended in the course of this Report to which the test of experience may not safely and effectually be applied.

All which is respectfully submitted.

(SIGNED.)      R. B. SULLIVAN,  
                          A. BALDWIN,  
                          ROBT. S. JAMIESON,  
                          HENRY SHERWOOD.

No. 1, Committee Room,  
Toronto, January 6th, 1840.

OFFICE OF THE COMMISSIONER OF  
CROWN LANDS.

The lands returned to this office for sale <sup>Lands under his</sup> consist of portions of the Crown Lands and of <sup>management.</sup> the Military Reserve at Toronto.

The Lands of the Six Nations Indians and of sundry Tribes of Indians are also placed under the management of the Commissioner.

The mode of disposing of the Crown Lands <sup>Mode of dispo-</sup> is regulated by 7 Wm. 4th chap. 118, which au- <sup>sing of Crown</sup> thorizes Land Rights to be taken in payment, Lands. both for Crown Lands and Clergy Reserves; the Crown Land Fund being charged with all the Land Rights so absorbed.

The effect of this arrangement has been to <sup>Beneficial to</sup> benefit the Clergy Reserve Fund at the expense <sup>Clergy Re-</sup> <sup>serves Fund.</sup> of the Crown Fund. The quantity of Clergy Reserve Land authorized to be sold is now nearly exhausted, but in the event of any additional portion being brought into the market, it is certain that such Lands will from their more favorable situations, command a ready sale. The effect then of the practice adopted in the Commissioners office of taking Land Rights in payment on Clergy Reserve Sales will be to charge the Crown Fund with a large sum on account of the Clergy Reserves while the amount realized by the sale of Crown Lands will be wholly inadequate to meet that charge.

Sale of Lands  
wellconducted.

But accounts  
confused.

Large defici-  
encies.

Statement of  
receipts and  
balances.

But no reliance  
placed thereon.

The business of this office, so far as regards the disposal of the Public Lands has been well conducted; but the system of accounts has been so confused and irregular, that large deficiencies have been discovered to exist, while the books furnish no means of readily detecting the cause.

The committee transmit a statement of the Receipts and Balances made to the 31st October 1839, and continued to the 14th November, but they place no great reliance on the accuracy of this statement, being satisfied that nothing less than a careful revision of the whole of the accounts will enable them to report the true Balances due to the public.

The balance appearing due by the Commissioner, is reported by him as now deposited by him, as a public officer, with the Bank of Upper Canada.

The committee beg to observe, that the arbitrary mode of charging the services of the Clerks in the Office of the Commissioner of Crown Lands, on the several funds accounted for by him, does not appear to have been authorized; they recommend, therefore, that some definite arrangement should be made regarding the same.

The Committee having recommended in their Report on the Receiver General's Office, that all monies should be paid to that officer, suggest in pursuance thereof, that in future

A definite mode  
for paying the  
Clerks should  
be adopted.

when any Sale of public Land is made by Auction, the person making such sale, shall transmit the proceeds to the Receiver General, together with such a statement of such Sales, to be filed in his office, a similar statement being forwarded to the Commissioner of Crown Lands, or agent for the sale of Clergy Reserves as the case may be, by whom the same will be carried to account.

Persons purchasing public lands should transmit proceeds to Receiver General.

Payments made in Toronto should be on a requisition in duplicate, one to be left at the office of the Receiver General, the other to be received, and returned to the Commissioner or other officer, as a voucher of the payment having been duly made.

Requisition for payments should be made in duplicate.

These vouchers transmitted periodically to the Inspector General, will enable that officer to check the accounts of the Receiver General.

The Committee are of opinion that too little regard has been paid to the instructions issued by the Lords of the Treasury to the Commissioner of Crown Lands, had those instructions been followed out, no such defalcation as the Commissioner complains of in his answer to the third query of the Committee could have occurred.

Too little regard for instructions of Lords of Treasury.

In the course of their investigation, the Committee addressed certain queries to Messrs. Thornhill, Tod, Dean and Stiers, whose replies particularly deserve the attention of the Government.

Answers of Messrs. Thornhill, Tod, Dean and Stiers. referred to.

Deficiency in  
the costs, the  
chief object of  
inquiry.

The chief object of the Committee in making those enquiries, was to ascertain if possible, how the deficiency in the cash complained of by the Commissioner of Crown Lands could have arisen, they regret that little light has been thrown on this subject, yet the fact of a certain loan having been authorized by the Commissioner to one of the clerks, which was from time to time advanced by the Cashier, out of money received in the Office on public account, may to that extent at least have been the occasion of the deficiency ultimately discovered in the amount of cash at the credit of the Commissioner at the Bank of Upper Canada.

Partly perhaps  
occasioned by  
a loan to one  
of the clerks.  
Explanation  
sought for from  
Commissioner,  
but none re-  
ceived.

The Committee sought to obtain from the Commissioner such explanations of the transaction in question as might have confirmed or changed that opinion but the Commissioner not having furnished any such explanation, the Committee have only to call the attention of the Government to the irregular proceedings which appear to have been permitted in the Crown Lands Office,

Revision ne-  
cessary in mode  
of conducting  
the office.

Method men-  
tioned in Mr.  
Patrick's report  
recommended.

The entire want of efficient checks in the office of the Commissioner of Crown Lands, together with the confused mode of keeping the accounts, render necessary in the opinion of the Committee, an immediate and more thorough revision of the system under which that office is at present conducted, than the Committee have been enabled to make, and that the method of keeping accounts in future,

recommended in the Report of Mr. T. C. Patrick, hereto annexed be forthwith introduced.

All of which is respectfully submitted.

(Signed)

W. ALLAN, CHAIRMAN,  
W. H. DRAPER,  
R. A. TUCKER,  
J. MACAULAY,  
J. S. MACAULAY,  
HENRY SHERWOOD.

Investigation Commission,  
Committee No. 2. 28th Dec. 1839.

APPENDIX No. 7. OF SECOND REPORT OF  
GENERAL BOARD.*Report of the Investigation Committee No. 2.*

**Salaries of Public Officers.** To the Board of Commissioners constituted by virtue of a Commission under the Great Seal of the Province of Upper Canada, appointed to enquire into the present state of certain Public Offices, &c. &c.

**Committee having forborne offering any suggestions as to the future salaries of Public Officers, or as to the necessity of any increase or reduction of salaries.** The Committee in their several Reports have forborne to recommend the increase or reduction of salaries. The assistance at present afforded, the more especially because by the Resolutions respecting the Union of Upper and Lower Canada, adopted by the Legislative Council and House of Assembly, the determination of the amount of the Civil List, and consequently the rate of salaries to those Officers, is left for the consideration of the Imperial Parliament, independant of which, the changes which that reunion necessarily involves and those which have been suggested by the Committee, if carried out will require many alterations of the present system of salaries, for the determination of which the committee have not the requisite data, nor do they conceive that their opinion on this subject, connected as it now is, with a great political change, was sought to be obtained.

**Reasons.**

With reference to the subject of the School Lands, the Committee have not yet been able

to acquire the information they have sought for, nor is it probable that they will be enabled to report thereon during the present Session of the Legislature.

Necessary information on school lands not yet obtained.

Throughout the whole of their proceedings the Committee have been strongly impressed with the importance of completing their several Reports in time for them to be laid before the Provincial Parliament during the present Session ; and this feeling has naturally induced them to bring their labours to a close with less attention to some of the minor objects of their investigation, than they would otherwise have felt disposed to devote to them.

Committee felt the importance of completing their report before close of session.

All which is respectfully submitted.

(Signed)

W. ALLAN, CHAIRMAN.  
W. H. DRAPER,  
R. A. TUCKER,  
JOHN MACAULAY,  
J. S. MACAULAY.

Investigation Commission,  
Committee No. 2,  
31st December, 1839.

